

**ALASKA STATE LEGISLATURE  
SENATE JUDICIARY STANDING COMMITTEE**

April 1, 2019

1:30 p.m.

**MEMBERS PRESENT**

Senator Shelley Hughes, Chair  
Senator Lora Reinbold, Vice Chair  
Senator Mike Shower  
Senator Peter Micciche  
Senator Jesse Kiehl

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE JOINT RESOLUTION NO. 6

Proposing amendments to the Constitution of the State of Alaska relating to an appropriation limit; relating to the budget reserve fund and establishing the savings reserve fund; and relating to the permanent fund.

- MOVED CSSJR 6 (JUD) OUT OF COMMITTEE

SENATE JOINT RESOLUTION NO. 4

Proposing amendments to the Constitution of the State of Alaska prohibiting the establishment of, or increase to, a state tax without the approval of the voters of the state; and relating to the initiative process.

- SCHEDULED BUT NOT HEARD

SENATE BILL NO. 35

"An Act eliminating marriage as a defense to certain crimes of sexual assault; relating to enticement of a minor; relating to harassment in the first degree; relating to harassment in the second degree; relating to indecent viewing or production of a picture; relating to the definition of 'sexual contact'; relating to assault in the second degree; relating to sentencing; relating to prior convictions; relating to the definition of 'most serious felony'; relating to the definition of 'sexual felony'; relating to the duty of a sex offender or

child kidnapper to register; relating to eligibility for discretionary parole; and providing for an effective date."

- BILL HEARING CANCELED

#### **PREVIOUS COMMITTEE ACTION**

BILL: SJR 6

SHORT TITLE: CONST AM:APPROP. LIMIT; RESERVE FUND

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/30/19	(S)	READ THE FIRST TIME - REFERRALS
01/30/19	(S)	STA, JUD, FIN
03/21/19	(S)	STA AT 1:30 PM BUTROVICH 205
03/21/19	(S)	Heard & Held
03/21/19	(S)	MINUTE(STA)
03/25/19	(S)	STA AT 5:00 PM BUTROVICH 205
03/25/19	(S)	Heard & Held
03/25/19	(S)	MINUTE(STA)
03/26/19	(S)	STA AT 1:30 PM BUTROVICH 205
03/26/19	(S)	Moved SJR 6 Out of Committee
03/26/19	(S)	MINUTE(STA)
03/27/19	(S)	STA RPT 2DP 1NR 2AM
03/27/19	(S)	DP: SHOWER, REINBOLD
03/27/19	(S)	NR: MICCICHE
03/27/19	(S)	AM: COGHILL, KAWASAKI
03/27/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/27/19	(S)	Heard & Held
03/27/19	(S)	MINUTE(JUD)
03/29/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/29/19	(S)	Scheduled but Not Heard
04/01/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

#### **WITNESS REGISTER**

MEGAN WALLACE, Director  
Legislative Legal Services  
Legislative Affairs Agency  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the discussion of SJR 6.

CORI MILLS, Senior Assistant Attorney General  
Civil Division  
Department of Law  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the discussion of SJR 6.

BRUCE TANGEMAN, Commissioner Designee  
Department of Revenue  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions on behalf of the administration during the discussion of SJR 6.

ED KING, Chief Economist  
Office of Management and Budget  
Office of the Governor  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the discussion of SJR 6.

DEBORAH HOLLAND, representing herself  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6 for a sustainable budget and to cut the budget.

ALLEN HIPPLER, representing himself  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6 to balance spending, revenues, and expenditures and still retain the permanent fund.

TIM ROBINSON, representing himself  
Wasilla, Alaska

**POSITION STATEMENT:** Testified in opposition to SJR 6 because the governor's budget is short sighted, ill advised, and sure to wreak havoc on Alaska.

LESLIE HVAMASHAD, representing herself  
Houston, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6.

JOHN MORIN, representing himself  
Soldotna, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6.

SAM ALBANESE, representing himself  
Eagle River, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6 because the state needs a cap to curb its spending.

CHARLES SIMON, representing himself

Hooper Bay, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6.

BARBARA HANAY, representing herself

North Pole, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6 and the governor's package.

LYNN LOWRY, representing himself

Wasilla, Alaska

**POSITION STATEMENT:** Testified in favor of the PFD but not for a cap.

BRIDGET SMITH, representing herself

Juneau, Alaska

**POSITION STATEMENT:** Testified in opposition to SJR 6 because Alaska has one of the best constitutions in the U.S. and she has concerns with Section 16.

KEN FREDERICO, representing herself

Wasilla, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6 because the state needs to rein in spending.

OLIVIA FELLERS, representing herself

Wasilla, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6 to rein in legislators, implement efficiencies, and to leave the PFD alone.

EDWARD MORAN, representing himself

Wasilla, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6 and the governor's budget.

KEN BROWN, representing himself

Soldotna, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6.

CAROLYN PORTER, representing herself

Palmer, Alaska

**POSITION STATEMENT:** Urged members not to cut dividends or implement taxes, and to reduce spending.

FRANK GOLDTHWAITE, representing himself

Sterling, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6.

MARILYN MENISHNUCHE, representing herself  
Petersburg, Alaska

**POSITION STATEMENT:** Strongly opposed SJR 6 because she does not support amendments to the constitution.

DARREN FIDLER, representing himself  
Wasilla, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6.

MARIETTA DAVIS, representing herself  
Petersburg, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6.

NORMAN CLARK, representing himself  
Kotzebue, Alaska

**POSITION STATEMENT:** Testified in opposition to SJR 6 to oppose reductions to the permanent fund dividend.

JOAN TRUITT, representing herself  
Big Lake, Alaska

**POSITION STATEMENT:** Testified in support of SRJ 6 to reduce spending.

GREGORY WHITE, representing himself  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6 to have a spending limit and prevent legislators from overspending.

JACK JOHNSON, representing himself  
North Pole, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6 to reduce spending.

EMILY MESCH, representing herself  
Juneau, Alaska

**POSITION STATEMENT:** Testified in opposition to SJR 6 because it would limit the legislature's ability to deal with unforeseeable problems.

LYNDA MYERS, representing herself  
Anchorage, Alaska

**POSITION STATEMENT:** Supported SJR 6 due to her concern that the legislature has overspent.

DAVE DANEZINE, representing himself  
Kasilof, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6.

SHOSHANA KUEN, representing herself  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in opposition to SJR 6 since it would be difficult to change or remove the cap.

GREG GARRIS, representing himself  
Talkeetna, Alaska

**POSITION STATEMENT:** Testified in favor of SJR 6.

BRIDGETTE VAUGHN, representing herself  
North Pole, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6 to cap government spending.

TANYA LANGE, representing herself  
Kenai, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6 because the state needs to cut spending and should not take the PFD.

ARTIS SELLIERE, representing himself  
Big Lake, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6.

GUY WHITNEY, representing himself  
Ketchikan, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6 and echoed the previous testifier.

TIM STATON, representing himself  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6 because a spending cap is long overdue.

COLLEEN BAGOT, representing herself  
Palmer, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6 in order to limit government spending and prevent government from taking money from Alaskans.

LINN MCCABE, representing herself  
Big Lake, Alaska

**POSITION STATEMENT:** Testified in support of the constitutional spending cap in SJR 6.

LARRY BEACH, representing himself  
Wasilla, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6 and cautioned legislators to follow the will of the people.

JERRY BAGNESCHI, representing himself  
Wasilla Alaska

**POSITION STATEMENT:** Testified in support of SJR 6 and expressed concern that the legislature spent its reserves and now wants to take the people's money.

ROSEMARY LEBOWITZ, representing herself  
Hoonah, Alaska

**POSITION STATEMENT:** Testified in strong support of SJR 6 to avoid taxes and conserve state spending.

MICHAEL GERENDAY, representing himself  
Wasilla Alaska

**POSITION STATEMENT:** Testified in support of SJR 6 to create a spending cap and protect the permanent fund.

JARED JORGENSEN, representing himself  
Soldotna, Alaska

**POSITION STATEMENT:** Testified in full support of SJR 6.

KATIE BOTZ, representing herself  
Juneau, Alaska

**POSITION STATEMENT:** Testified in opposition to SJR 6 because the state needs to budget wisely, reduce the PFD, and institute an income tax.

ELIZABETH SWEET, representing herself  
North Pole, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6 to reduce spending.

JOHN MILLER, representing himself  
Wasilla, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6 because he supports the governor's financial plan.

STACEY SEEGER, representing herself  
Eagle River, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6.

JAMES SQUYERS, representing himself  
Rural Deltana, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6.

PAMELA GOODE, representing herself  
Rural Deltana, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6 to limit state spending.

FRANK WHITESIDES, representing himself  
Ketchikan, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6.

DAVID AUSTIN, representing himself  
Hoonah, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6.

RONALD HOWARD, representing himself  
Ketchikan, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6.

KIRSA HUGHES-SKANDIS, representing herself  
Juneau, Alaska

**POSITION STATEMENT:** Testified in opposition to SJR 6.

GAIL LIMBAUGH-MOORE, representing herself  
Soldotna, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6.

KAREN PERRY, representing herself  
Wasilla, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6.

JUDITH CLARK, representing herself  
Hoonah, Alaska

**POSITION STATEMENT:** Offered conditional support of SJR 6.

JASON DUNN, representing himself  
Wasilla, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6 because people rely on the PFD.

RALPH VERNACHIO, representing himself  
Chugiak, Alaska

**POSITION STATEMENT:** Testified in full support of SJR 6.

RON GILLHAM, representing himself  
Soldotna, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6 since the spending cap will keep the government in check.



DONNA AUSTIN, representing herself  
Hoonah, Alaska

**POSITION STATEMENT:** Testified in support of SJR 6.

DOUGLAS LOWRY, representing himself  
Fairbank, Alaska

**POSITION STATEMENT:** Testified in support of the spending cap in SJR 6 and to retain the PFD.

CAROLINE MALSEED, representing herself  
Juneau, Alaska

**POSITION STATEMENT:** Testified in opposition to SJR 6 to allow elected officials to make short-term fiscal decisions and not imbed appropriations in the constitution.

#### **ACTION NARRATIVE**

[1:30:40 PM](#)

**CHAIR SHELLEY HUGHES** called the Senate Judiciary Standing Committee meeting to order at 1:30 p.m. Present at the call to order were Senators Shower, Reinbold, Kiehl, Micciche and Chair Hughes.

#### **SJR 6-CONST AM:APPROP. LIMIT; RESERVE FUND**

[1:30:59 PM](#)

**CHAIR HUGHES** announced that the first order of business would be SENATE JOINT RESOLUTION NO. 6, Proposing amendments to the Constitution of the State of Alaska relating to an appropriation limit; relating to the budget reserve fund and establishing the savings reserve fund; and relating to the permanent fund.

**CHAIR HUGHES** reviewed the calendar items and action on SJR 6 to date.

[1:32:19 PM](#)

**SENATOR KIEHL** said he read the legal memo [from Megan A. Wallace, Director, Legal Services, Division of Legal and Research Services, Legislative Affairs Agency dated March 29, 2019]. He said he was satisfied with the memo. He wondered if the committee would hear from Ms. Wallace and the Department of Law on the legal issues.

**CHAIR HUGHES** remarked that the Senate Judiciary Standing Committee has responsibility for the constitutionality of matters that come before it. She indicated that the Department

of Law indicated it felt confident that it could defend the constitutionality of the constitutional amendment in SJR 6. She directed attention to Ms. Wallace's memo of March 29, 2019, and to page 2. She said that Ms. Wallace brought up the preliminary opinion, which does give some insight. However, what matters is the final decision since the final opinion sets precedent. Although the preliminary opinion mentioned the Florida factors, the final decision did not use them, she said. She asked for further clarification on whether the preliminary opinion would set precedent.

[1:34:22 PM](#)

MEGAN WALLACE, Director, Legislative Legal Services, Legislative Affairs Agency, Juneau, stated that the preliminary opinion gives the parties insight in terms of the court ruling and the grounds it is using for that ruling. In *Bess v. Ulmer*, the [Alaska Supreme Court] issued a preliminary opinion. The final opinion issued by the court reaffirms that prior opinion. Thus, the preliminary opinion is included in totality along with the final opinion that was rendered by the court, she said. As she articulated in the follow-up memo on members' desks, her office has historically included the Florida analysis as part of the quantitative analysis as to whether a constitutional amendment before the legislature amounts to a revision or an amendment. Those factors are part of the balance between the quantitative and qualitative analysis. That is the reason her agency has continued to look to that case and the factors used in *Bess v. Ulmer* to determine the quantitative part of the court's hybrid analysis.

[1:36:05 PM](#)

CHAIR HUGHES said that she appreciated that Ms. Wallace's job is to bring these things to light. She reminded members that "we were read from that final opinion that they did not use the factors, that they referred to California's way of doing it in that final opinion."

She directed members' attention to page 3 of the memo from Ms. Wallace dated March 29, 2019. She explained that she reviewed each item separately to be certain that SJR 6 would pass constitutional muster. She shared her response to each of the five items listed in paragraph two of the memo. She referred to item (1), which read, "renaming it" and responded that is a minor change. She turned to item (2), which read, "changing the requirements for deposits of the settlement proceeds;" and said that she looked at the [resolution] and it added "directly" as an adjective, which seemed pretty minor.

CHAIR HUGHES turned to item (3), which read, "changing the withdrawal requirements;" and responded that the current Constitution [of the State of Alaska] has withdrawal requirements. She paraphrased [Section 3 of SJR 4], " ... cannot exceed the amount of the previous year's appropriations." She said [SJR 6] would change this language to "cannot exceed the gap up to the spending limit." That did not seem extremely significant to her, although she agreed someone might argue otherwise, she said.

She turned to item (4), which read, "repealing and eliminating the provision authorizing withdrawals for any public purpose with a three-fourths vote of each house of the legislature;" which is changed to a simple majority [in SJR 6]. She acknowledged that this change has some significance. However, the reality is that in the Senate it would be the difference of four votes and in the House, it would be a difference of nine votes. She said she thought of this in the context of the reapportionment case, in which some of the executive branch's power was assigned to the legislative branch through the appointment of the reapportionment board members. She said she concluded that was much more significant than changing the number of votes. Yet, the reapportionment case was found to be an amendment rather than a revision [to the Constitution of the State of Alaska], she said. She said that she considered the totality of the changes in SJR 6, as listed in the memo, which initially seemed like a lot. However, when she considered each change separately, the changes did not seem to rise to the level of major changes.

1:39:09 PM

CHAIR HUGHES said the memo went on to say, "This mandatory deposit is especially restrictive of the legislature's appropriation power since the legislature may not appropriate from the principal of the Alaska permanent fund and SJR 6 provides limited access to the savings reserve fund." She said that Ms. Wallace pointed out that SJR 6 is restricting the legislative power of appropriation. However, she said she realized that is what a spending cap or an appropriation limit does. It does restrict the appropriation ability to some extent. This is already in the [Constitution of the State of Alaska], she said. The restriction of the legislative power of appropriation occurred when the language was added in 1982. Now the legislature is making some adjustments, she said. She offered her belief that the legislature is not "all of sudden"

changing that restriction. Instead, the legislature is making some adjustments and "moving some levers."

CHAIR HUGHES said she tried to read Ms. Wallace's memo with an open mind. If [SJR 6] were to be challenged, she wanted to ensure that the committee had reviewed everything. She reiterated that on the surface, someone might think a lot of changes were being made, but when the language is parsed, and in her review of the original amendment [to the Constitution of the State of Alaska] adopted in 1982, she felt quite comfortable. In addition, the Department of Law has remained confident that [SJR 6] would be upheld in court. This has given her a level of confidence, she said.

1:40:55 PM

CHAIR HUGHES acknowledged that some adjustments would be made to SJR 6. She said she has some concerns that if the growth is too flat, the state might have trouble meeting some of its constitutional obligations. However, she reviewed the analysis in the memo and SJR 6, in terms of the overall structure and the parts, and in her view the changes in SJR 6 "would be constitutional." She wanted the record to reflect her reasoning and process. She acknowledged that someone else may have a different opinion than hers.

1:41:48 PM

SENATOR KIEHL said that to inform his opinion, he has a few questions. He noted that the Alaska Supreme Court's decision referenced a hybrid test. He said that the California [Supreme Court] looked at the qualitative and quantitative change and the Alaska Supreme Court mentioned a hybrid. He asked for further clarification on whether this was a hybrid of California on quantity and Florida on quality, or what else is hybridized.

MS. WALLACE interpreted the test to mean the Alaska Supreme Court (ASC) took a hybrid approach. The ASC considered the court cases from Florida and the series of cases that the California Supreme Court has used to analyze constitutional amendments and took a hybrid approach. She offered her belief that the ASC took these factors and reviewed the Florida analysis specifically with respect to the quantitative analysis. The ASC also specifically looked at the California holdings and cited a few of the California cases and went through the process of analyzing each of the three constitutional amendments that came before the court and used a hybrid approach. She characterized it as a hybrid of this quantitative and qualitative analysis from both the Florida and California cases.

1:43:26 PM

SENATOR KIEHL said it was useful to see how Florida was incorporated into the final decision since he did not understand what was being hybridized just using the California approach. In considering whether this is an amendment or a revision [to the Constitution of the State of Alaska], he related that the 1982 appropriation limit was an amendment. He asked whether it is relevant that the constitutional budget reserve (CBR) did not exist at the time.

MS. WALLACE answered that this is certainly one of several components that a court would look at when determining whether the proposal the governor submitted, [SJR 6], is a revision or an amendment. She said that in her opinion it is difficult to only use the argument that the appropriation limit is already in the constitution. She said she was not aware that the Alaska Supreme Court (ASC) has ever rendered an opinion on the appropriation limit as introduced as an amendment in the constitution.

1:44:42 PM

MS. WALLACE said:

So not only do we only have one supreme court ruling, the Bess ruling, to give us this guidance, but we kind of have to pull what we can from Bess to give you the analysis of what we think a court might do the next time that it has to decide whether a proposal is an amendment or a revision. But the court hasn't ever looked at the appropriation limit itself and made a determination whether that limit as it went into the constitution had an effect on the legislature's power over appropriation or whether it was so restrictive.

Now, with that, it's obvious, and the reason the appropriation limit itself is before you is that regardless of whatever intent went into the appropriation limit, there is no dispute that the constitutional appropriation limit is not very restrictive on the legislature right now, or not restrictive at all in terms of the way that inflation's been calculated and their starting number. But what is left to be decided is that any appropriation limit, no matter how flexible or how restrictive, whether or not a court would say that you're impinging too far on that foundational inherent

power of the legislature. And in my opinion, my concern is not pointed just at the appropriation limit.

1:46:16 PM

As I note in a footnote in my memo, the real concern in the proposal in SJR 6, at least why I caution a conservative review, is that it has a very significant change in the flow of revenue and what is in the general fund. And the changes that are proposed not only affect the cap of what the legislature may appropriate each year, but it also restricts the leftover funds that are available to the legislature and to the next legislature to appropriate. And the provision itself requires that any revenue left over in the general fund at the end of the fiscal year, part of it goes to the permanent fund, which the legislature cannot appropriate from at all. And any leftover funds, part of that may go into the budget reserve fund or what has been renamed as the savings reserve fund.

And the amendment goes on to then change the legislature's ability to appropriate from that savings account. So right now, the legislature can appropriate from the CBR for any public purpose, regardless of what appropriation limit exists in the constitution today. And by removing that public purpose, or repealing the public purpose - the appropriation option, you are significantly constraining the appropriation power as it currently exists today in our state constitution. And the more restriction that you place on a legislature, and particularly a future legislature's power to appropriate funds will require that you'd have that more, broad look at the constitution and look at how many of the provisions that an amendment like this may touch on, because it's not only the appropriation limit and the CBR. It's also the dedicated fund provision, which there's an exception to that within the contents of this. And when we adopted the permanent fund amendment there was a change to Article IX, Sec. 7 to specifically exempt the permanent fund from the dedicated fund provision. And this amendment takes a little bit different of a drafting choice and the exemption to Article IX, Sec. 7 is within the subsection itself. And so, if we were to go back and amend the dedicated fund provision,

we're adding one more section to the constitution that we're amending to accomplish this.

1:49:05 PM

SENATOR KIEHL said her memo mentions a phrase "foundational power." He said significant conversation has occurred with the reapportionment or redistricting amendment. It seemed that she had suggested that the analysis is about what "foundational power" is and he asked how to analyze what is foundational.

MS. WALLACE recognized that other people might have different opinions. She clarified that other opinions are not wrong opinions, but her job is to make certain that the legislature has both perspectives of the analysis. She said that reapportionment or redistricting is handled by each state differently. It is not an inherent power of the executive branch, in terms of the inherent or foundational powers of the legislature. She said that is the lawmaking power, which is the power of appropriation. This affects the cornerstone foundational power of the legislature. However, not all constitutional amendments necessarily require such strict scrutiny or caution from the legislature. She said that as legal counsel for the legislature, she wants to make sure that legislators understand that when a piece of legislation restricts the legislature's inherent or foundational power to an extent that does not exist today, legislators at least understand it before moving forward. Ultimately, it is a policy choice. If the legislature is comfortable with that restriction in power, it is a policy decision that the legislature will make going forward. She summarized that redistricting and reapportionment is not a foundational power of an executive branch, but to the contrary, appropriation and lawmaking is a foundational power of the legislative branch of government.

1:51:54 PM

SENATOR REINBOLD said she thinks the intent is to cap spending. She offered her belief that for at least a decade, the legislatures have not been spending responsibly. She said that cleaning out the CBR, the statutory budget reserve, and about \$3 billion of the earnings reserve account would tie the hands of future legislatures because the money is gone. She said that will impact future generations. She expressed concern that it already violates the constitution when the legislature does not handle things appropriately. She said she thinks that this constitutional amendment is very important. She mentioned several funding programs that impact the legislature, including education, health care, public employee, and teachers'



retirement. She asked whether all of these things restrict the legislature's appropriation ability.

MS. WALLACE answered that the legislature does have some options in terms of changing the statutory calculations for the base student allocation and statutory formulas. She agreed the legislature has a constitutional obligation to adequately provide for education.

SENATOR REINBOLD remarked that the Constitution of the State of Alaska only states that the legislature has to keep a system of education open to all children and not that the legislature has to do the BSA.

[1:54:42 PM](#)

SENATOR SHOWER appreciated the points that Chair Hughes brought up. He appreciated hearing the attorneys' arguments, too. He asked to read a portion of Constitution of the State of Alaska. He read:

#### Section 2. Source of Government

All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole.

He said that although legislators are representatives of the people, part of the process involves the public, including the ability to put initiatives before the people for a vote. The people have voted on this issue twice and the will of the people is for the state to have a spending limit. He argued that the will of the legislature was executed because they passed the resolutions. He said he has often heard, "If it ain't broke, don't fix it." He offered his belief that the will of the people, as per testimony he has heard, is that the legislature needs to have its hands tied. He said he refers to the actual language in the Constitution of the State of Alaska to remind members that the government is founded upon the will of the people and not by the legislature or the governor. Collectively, the citizens want a spending limit and currently want one that is relevant. He offered his belief that the committee will address some of the concerns that people have expressed about spending limits, caps, and growth to ensure that the constitutional limit is more relevant. He agreed that it is an important goal, yet it is important not to tie the legislature's hands. He remarked that three members have seen SJR in a



previous committee, the Senate State Affairs Standing Committee. He offered his belief that this document, [the Constitution of the State of Alaska], is critical. He thinks that the people have already spoken, and the court has not spoken since it was not necessary.

1:57:20 PM

CHAIR HUGHES said that if the power is derived from the people and they vote for the amendment to restrict the legislature's power, they have the right to make that choice.

1:58:16 PM

CORI MILLS, Senior Assistant Attorney General, Civil Division, Department of Law, Juneau, stated she does not have much to add, but as Ms. Wallace pointed out differing legal opinions on legal tests occur. In this instance, only one case from the Alaska Supreme Court provides guidance. She said that in the DOL's review of Bess v. Ulmer, it feels very comfortable defending [SJR 6] if it is challenged and it is the department's view that the court is likely to uphold it as an amendment.

She said that Bess v. Ulmer looked at three different proposals and only found one to be a revision. The ASC upheld two out of the three. She acknowledged that comparisons can be made, but ultimately the department believes that the court will look at the Constitution [of the State of Alaska] as it stands today. The constitution contains an appropriation limit and it has the constitutional budget reserve (CBR), she said. Both of these are meant to address spending by the legislature and the governor and to try to provide some type of mechanism to make sure that the state has savings in the future.

1:59:35 PM

MS. MILLS said that using a high-level analysis of Bess v. Ulmer, the department believes that considering that framework, which is already in the [Constitution of the State of Alaska], these amendments or changes do not go so far as to be a foundational, fundamental change to the constitution and therefore would be viewed as an amendment instead of a revision.

2:00:00 PM

SENATOR KIEHL asked the record to reflect that Bess v. Ulmer did not leave two constitutional amendments untouched. He said, "It's simply not factual." He gave his high-level analysis of Bess v. Ulmer. In fact, the court cut one of the proposed constitutional amendments in half because the second proposed sentence was so radical and so far-reaching that it would have

had consequences that rippled throughout the constitution. The court struck it.

He said he did not find it quite useful in the analysis of the three proposed constitutional amendments the court had in front of it in Bess v. Ulmer to say the court said, "Oh, these two are great, no worries, we're only worried about the one."

2:01:10 PM

MS. MILLS said the Department of Law stands by its original analysis. She said that in reviewing the marriage amendment, which is what Senator Kiehl is referring to, the Alaska Supreme Court did strike the last sentence. She said that all the parties agreed that it was superfluous. She said that is actually in the discussion in the preliminary order. She said that is the reason the department did not focus a lot on it, but rather focused on what was the foundational change those amendments were trying to make. In that case, it was to define a marriage between a man and a woman. The court let that go to the ballot, she said.

2:02:07 PM

SENATOR SHOWER moved to adopt Amendment 1, work order 31-GS1068\A.4, Wallace, 3/30/19.

31-GS1068\A.4  
Wallace  
3/30/19

**AMENDMENT 1**

OFFERED IN THE SENATE

BY SENATOR SHOWER

TO: SJR 6

Page 1, lines 2 - 3:

Delete "and establishing the savings reserve  
fund"

Page 2, line 12:

Delete "and"

Page 2, line 14, following "law":

Insert "; and

(9) for capital improvements, except that the total amount of appropriations for capital improvements in a fiscal year shall not exceed ten percent of the total appropriation limit for that fiscal year"

Page 2, line 21:

Delete "savings"

Insert "budget"

Page 2, line 22:

Delete "savings"

Insert "budget"

Page 2, lines 28 - 29:

Delete "savings [BUDGET] "

Insert "budget"

Page 3, line 4:

Delete "savings [BUDGET] "

Insert "budget"

Page 3, line 5:

Delete "savings [BUDGET] "

Insert "budget"

Page 3, line 13:

Delete "savings [BUDGET] "

Insert "budget"

Page 3, lines 19 - 20:

Delete "new sections"

Insert "a new section"

Page 3, line 26, through page 4, line 1:

Delete all material.

CHAIR HUGHES objected.

SENATOR SHOWER related one concern that was raised in the [Senate State Affairs Standing Committee] was whether it was necessary to redefine the [constitutional budget reserve fund (CBR) to the savings reserve fund (SRF)]. After much discussion, it was decided that it was not necessary and adds confusion. The first part of Amendment 1 would strike the language "savings reserve fund" and any reference to it. The effect of this is to retain the CBR, he said.

He said that the second part of Amendment 1 would relate to instances in which excess funding occurs. For example, in the event that oil prices are high, or the pipeline produces more oil than projected, instead of spending the excess revenue, the appropriation formula would allow a portion of the excess revenue to be used for capital improvements for one year. This would also mean the legislature could obtain matching federal funds, which could be applied to some of the deferred maintenance.

SENATOR SHOWER referred to page 1, line 9 to paragraph 9, which read, "(9) for capital improvements, except that the total amount of appropriations for capital improvements in a fiscal year shall not exceed ten percent of the total appropriation limit for that fiscal year." In essence, this means that the legislature could appropriate up to ten percent outside the appropriation spending limit and use that excess money for capital improvement projects, if it chose to do so. He offered his belief that trying to fit deferred maintenance inside the spending limit is very difficult. He added that the PERS [Public Employees' Retirement System] and TRS [Teachers' Retirement System] payments "gets really tight on that growth curve" so Amendment 1 would allow the legislature the flexibility to provide funding without spending \$3-5 billion, or drawing on the earnings reserve account or the savings account, he said.

[2:05:39 PM](#)

CHAIR HUGHES acknowledged that she had raised the concern about capital improvement funding at a previous meeting, so she is supportive of this concept. She asked for further clarification on the ten percent figure and if it was based on historical figures.

SENATOR SHOWER said he had examined a number of percentages. He said that ten percent seemed reasonable after reviewing the ebb and flow over time since it would provide sufficient matching funds. He found that by using 15-20 percent the figures grew dramatically, which results in wild swings in spending. In further response, he related a scenario with a total budget of \$5 billion, with \$4 billion in operating funds and \$1 billion for capital improvements under the appropriations limit. He stated that using the calculation of 10 percent of the total appropriations limit would yield an additional \$500 million that could be spent on deferred maintenance and other big projects in a good year.

[2:08:02 PM](#)

CHAIR HUGHES asked whether the Department of Law would address her question, whether ten percent would be on top of any capital spent under the limit.

MS. MILLS referred to page 1, lines 11-12, of SJR 6, and read, "This subsection does not apply to an appropriation" and then referred to Amendment 1, which read, in part, "(9) for capital improvements ...." When read together it would read, "This subsection does not apply to an appropriation for capital improvements." That means that capital improvements would never be included when calculating the cap. She continued by saying that capital improvements are outside the cap but "the total amount of appropriations for capital improvements in a fiscal year shall not exceed ten percent of the total appropriation limit for that fiscal year." She said the way she interprets this is that in any given year "you're stuck with ten percent" because it is never inside the cap.

CHAIR HUGHES asked whether that was the sponsor's intent.

SENATOR SHOWER asked Commissioner Tangeman to provide an opinion.

[2:09:47 PM](#)

BRUCE TANGEMAN, Commissioner Designee, Department of Revenue, Anchorage, said this is exposing the conversation the governor would like to avoid with it being so restrictive. He said,

"We've included capital within the spending limit because as soon as you start making exceptions, there's ways to work around the limit." He said he certainly understands the intent of Amendment 1 and that the legislature may wish to go in a slightly different direction; however, Governor Dunleavy is more inclined to keep everything under the limit to avoid situations like this. He deferred to the Department of Law as to the technical aspects; however, the bigger picture is that this would change the governor's intent with respect to the spending limit.

SENATOR SHOWER questioned whether deferred maintenance could ever be addressed given the curve as currently presented. He said that the reality is that the language [in SJR 6] is so restrictive that it would not be possible to appropriate sufficient capital improvement funding to address deferred maintenance.

[2:11:52 PM](#)

MS. WALLACE concurred that Amendment 1 is drafted to exempt all capital improvements from the spending cap, but then cap the amount of appropriations at 10 percent of the total appropriation limit. She said that if it were the will of the committee, it is possible to amend Amendment 1 to state that "capital improvements are exempt and that to the extent that capital improvements go over 10 percent of the appropriation limit, then those appropriations count towards the limit." She acknowledged that other avenues exist to address and allow some flexibility for the legislature if it sees the need for capital improvements to exceed 10 percent of the total appropriation limit. She agreed that as drafted it is restricted to a 10 percent cap for capital improvements in a single fiscal year.

CHAIR HUGHES said that it would be her preference to have some under the cap and limit it to ten percent over the cap. She offered her belief that this might be a little complicated to do "on the fly." She understood Senator Shower's intent. She noted that the legislature has realized a lack of willingness to reduce the operating budget. Further, the capital budget has been very lean. One of the legislature's core responsibilities is to ensure sufficient infrastructure for economic development in the private sector. She said this has been a concern of hers, so she supports the concept. She wondered if the legislature should never spend a penny more than 10 percent of the appropriation limit on capital improvement projects if room exists under the cap. She said that she feels comfortable putting some of that towards capital improvements.

2:14:04 PM

At-ease.

2:19:51 PM

CHAIR HUGHES reconvened the meeting. She related her understanding that Amendment 1 was not meeting the sponsor's goal.

SENATOR SHOWER said the intent of Amendment 1 was to have a spending limit that includes operating and capital improvements, and not to exceed 10 percent over that amount. This has turned into something slightly different. He asked for further clarification by the legislative legal attorney on Amendment 1.

MS. WALLACE responded that Amendment 1, as currently drafted, would exempt all capital appropriations from the appropriation limit, but it sets a hard cap for capital appropriations in a fiscal year, that capital appropriations may never exceed 10 percent of the total appropriation limit. During the at-ease, the committee discussed "going back to the drawing board" to modify that language to allow the legislature more flexibility to make capital improvement appropriations, but still maintain the exemption for capital appropriations from the appropriation limit; however, if the legislature exceeds the 10 percent appropriation limit, all additional capital appropriations in that fiscal year will count against the appropriation limit and would be debated alongside the other appropriations that are indeed subject to the appropriation limit.

2:22:05 PM

SENATOR MICCICHE asked whether it would be safe to say that the effect would be to withdraw this section.

CHAIR HUGHES explained that she wanted to highlight what is wrong and the remedy. She said Amendment 1 consisted of two parts, first to rename the fund, which is fine. Secondly, the maker of Amendment 1 would offer a conceptual amendment to remove the problematic language and submit a new amendment to ensure that a hard cap of ten percent on the total appropriation limit for capital improvements, but appropriations for capital could be made if room exists under the cap. She added that above the cap, the legislature would have a 10 percent cap.

2:23:10 PM

SENATOR SHOWER remarked that he questioned rolling both pieces into one amendment.

SENATOR SHOWER moved to adopt a Conceptual Amendment, to Amendment 1, referred to as A.4, to strike lines 7-11 and leave the rest of the language in Amendment 1 intact.

There being no objection, the Conceptual Amendment to Amendment 1 was adopted.

[2:23:54 PM](#)

CHAIR HUGHES brought Amendment 1, as amended, before the committee for further consideration.

She explained that this would rename the savings reserve fund to the budget reserve fund as currently in the [Constitution of the State of Alaska]. In response to Senator Micciche, she agreed that it keeps the name as currently in the constitution.

[2:24:32 PM](#)

SENATOR REINBOLD asked whether the Department of Law was comfortable with the change.

MS. MILLS said she did not see any legal issues with the change. It does not destroy the rest of the intent of Amendment 1 if the purpose is to return to calling it the budget reserve fund instead of the savings reserve fund. In further response to Senator Reinbold, she said that she cannot speak to policy but from a legal standpoint reverting to the budget reserve fund is fine.

[2:25:35 PM](#)

SENATOR REINBOLD said that she liked the idea of naming it "a savings reserve fund" and has a problem changing it. She expressed concern with the 10 percent [appropriation above the cap]. She said she was here in FY 15, when there was a \$3 billion capital budget. She said that every type of operating budget supplemental [appropriation] was included in the capital budget. She said that she fundamentally does not trust the legislature to have fiscal restraint. She said that she cannot support it at this time. She offered her belief that capital projects can be done through the federal government or can be accomplished via local government. She said that in the Anchorage area, residents pay significant property taxes. She said that fundamentally she did not want to see the cap exceeded. She said that the public wants more restraint, that the legislature spent \$15 billion in the last five years.



CHAIR HUGHES stated that the current discussion is on retaining the current name of the fund in the Constitution [of the State of Alaska]. She acknowledged that her comments would be appropriate when the proposed amendment is discussed.

SENATOR REINBOLD indicated she wanted the record to reflect her remarks.

2:26:56 PM

SENATOR MICCICHE said that he is in favor of removing the language on the savings reserve fund because it serves no purpose other than to rename it. He said that the fund is a constitutional budget reserve and actually is not a savings reserve fund. He offered his support for Amendment 1, as amended.

MS. MILLS directed attention to page 2, [lines 18-19] of Amendment 1, referred to as A.4, which read:

Page 3 lines 26, through page 4, line 1:  
Delete all material.

She said that this relates to the transition provision for the budget reserve fund. She said she understood the reason for this in terms of the savings reserve fund, but the very last sentence refers to the repayment obligation of the transition provision. It makes it very clear that there is no repayment obligation because that is being repealed. She said she was unsure if there was an intention or whether it seemed unnecessary since it is being repealed there would not be a repayment obligation.

SENATOR SHOWER offered his belief that she actually answered it unless it would impact another section.

MS. MILLS clarified that the way Amendment 1 is drafted, it would delete Section 31. She asked for further clarification whether any thought was given with respect to the repayment obligation. She asked whether it was the intent to make sure the repayment obligation is eliminated.

2:29:20 PM

CHAIR HUGHES asked whether the repayment provision is found elsewhere.

MS. MILLS explained that the repayment provision is found on page 4, in proposed Sec. 5, line 2, which read:

\*Sec. 5. Article IX, sec. 17 (c) and (d), Constitution of the State of Alaska, is repealed.

She said that sec. 17 (d) is the repayment obligation. The question relates to the existing repayment obligation of \$10-11 billion. She explained that the resolution was drafted to include specific language to clarify that once the provision is repealed the repayment obligation goes away, so "you don't have the sweep and you don't have to repay the fund." She reiterated that she was unsure if the intent was that the repayment obligation did not need to occur.

[2:30:33 PM](#)

At-ease.

[2:30:54 PM](#)

CHAIR HUGHES reconvened the meeting.

COMMISSIONER DESIGNEE TANGEMAN offered that from a policy perspective, the intent is to do away with the CBR [constitutional budget reserve] fund, the three-quarters vote, the repayment, and the sweep options. The intent of the savings reserve fund was to have in place a vehicle to store revenues for the next year's budget, but only for that budget, which could be accessed with a simple majority vote. In the event that excess revenue existed, an amount would be deposited into the savings reserve fund to cover the next year's budget. Any additional revenues would go back to the permanent fund to repay half of the permanent fund dividend from the previous year. If excess reserves still existed, the balance would be deposited to the corpus of the permanent fund. Therefore, the need for the CBR would not exist. The savings [reserve fund] would cover enough for the next fiscal year and that is all that is required under [SJR 6].

COMMISSIONER DESIGNEE TANGEMAN said that if the committee is going down a different road, Ms. Mills just wanted to point out that the committee would be changing the intent of the governor's resolution, which the committee has a right to do. He said it was important for the record to reflect the governor's intent of SJR 6. He agreed that eliminating the CBR is part of the resolution.

[2:32:41 PM](#)

SENATOR MICCICHE said he was unsure who did not understand the governor's purpose for [SJR 6], but "that's what we're trying to change. That's the part that borders on being unconstitutional

and likely gets stricken down." He said, "I support a strict appropriation limit that includes tight reins on capital." He characterized the rest as noise. He said he thought that was the purpose of going back to the CBR, but it seemed as though more discussions are needed.

[2:33:22 PM](#)

SENATOR SHOWER, speaking as sponsor of Amendment 1, agreed. He said two things were raised that he did not anticipate so he would like to further review it. He highlighted that his intent was to limit the amount of changes being made to the [Constitution of the State of Alaska]. As Senator Micciche noted, the changes are noise. He suggested that the goal was to limit the potential issues while still allowing a safety valve if the state had a lot of excess revenue available to allow the legislature to spend additional funds with a cap, without exceeding or changing the intention of the amendment to the Constitution [of the State of Alaska], which establishes a strict spending limit that the state desperately needs. It just needs to be relevant, he said.

[2:34:47 PM](#)

SENATOR SHOWER said he intended to rewrite the amendment and break it into two parts.

[2:35:04 PM](#)

SENATOR SHOWER withdrew Amendment 1.

SENATOR MICCICHE objected, then withdrew his objection.

[2:35:56 PM](#)

SENATOR MICCICHE moved to adopt Amendment 2, work order 31-GS1068\A.3, Wallace, 3/27/19.

31-GS1068\A.3  
Wallace  
3/27/19

#### AMENDMENT 2

OFFERED IN THE SENATE

BY SENATOR MICCICHE

TO: SJR 6

Page 1, lines 9 - 10:

Delete "fifty percent of the cumulative change in population and inflation since January 1 of the previous calendar year, derived from federal indices

as prescribed by law, or two percent, whichever is less."

Insert "the average change in inflation in the previous five fiscal years. In this subsection, the change in inflation shall be based on the Consumer Price Index for Anchorage, Alaska, as prescribed by law."

CHAIR HUGHES objected for discussion purposes.

SENATOR MICCICHE said that Amendment 2 would delete fifty percent of the cumulative change in population or two percent of the consumer price index, whichever is less. He characterized this as a "five-year smooth change in inflation average" based on the consumer price index for Anchorage, which is still typically below that range and would avoid the spikes. The old limit was 1.9 percent below likely real inflation, which he suggested is mathematically unattainable. He said this presents a more realistic curve, and he had a diagram he could share with members so they can see the small change.

2:37:17 PM

SENATOR HUGHES recalled the presentation indicated that as the economy grows and the population changes, some parts of government might need to grow. She suggested that this might mean more teachers or troopers but probably not other employees. She recalled asking what percentage of the government needs to grow. She was unsure if he had a response. She expressed concern that it might be a little "flat" and asked whether Mr. Tangeman could speak to whether it was reasonable.

COMMISSIONER DESIGNEE TANGEMAN said that he did not have the specific percentages of types of employees in the state, but certainly if population is growing in the state, the line would be less flat. He offered his belief that it would be up to the legislature and the administration to decide the type of employees needed, and if it would be teachers, troopers, or others. He said that the administration did not want to restrict how additional funds should be spent under the cap. He said, "It's more just about the cap."

COMMISSIONER DESIGNEE TANGEMAN, speaking to Amendment 2, said the administration does not object to it. He said the administration understands it is a formula, which can be

adjusted. He characterized it as "fairly flat" from the department's perspective. He said that "giving a little relief under that is certainly reasonable." He said, "We don't object to the formula change."

[2:39:57 PM](#)

SENATOR REINBOLD asked how much more this would cost assuming the total budget would be \$10 billion.

COMMISSIONER DESIGNEE TANGEMAN said that he did not have that information.

[2:40:24 PM](#)

ED KING, Chief Economist, Office of Management and Budget, Office of the Governor, Juneau, said he did not have the specific figures with him but offered to provide them to the committee. Generally speaking, he said that Amendment 2 would raise the allowable growth rate above the proposed rate in the original resolution. Given the existing projections for inflation and population, the original proposal allowed a growth rate of about 0.8 percent over time, he said. The five-year average real rate of inflation against the three-year average budget is closer to 1.1 percent. Although the rate in Amendment 2 is more than the original proposal, it is not excessive, he said.

[2:41:41 PM](#)

SENATOR REINBOLD said that this would just increase the cap. She expressed frustration at the number of times that she has heard promises that government will be reduced, or how services are needed to address issues, but she has not seen the outcome. She would like to see government reduced without having loophole after loophole that allows government to grow.

[2:42:38 PM](#)

CHAIR HUGHES asked for further clarification that the original proposal allows a 0.8 percent growth rate and under Amendment 2, it would be 1.1 percent growth rate.

MR. KING answered that because of the 2009-14 timeframe with low inflation, the rolling five-year average will be about 1.5 percent growth rate. He anticipated that inflation would stabilize going forward at 2.25 to 2.5 percent. He stated that the previous 5 years at 2.5 percent inflation would be allowed against the average of the previous 3 years, which would be less and be about 1.1 percent. In response to Chair Hughes he said

the growth rate in SJR 6 is 0.8 percent, which increases to 1.1 percent under Amendment 2.

CHAIR HUGHES asked whether the starting point is more important. She recalled from the presentation that the problem with the 1982 spending cap was the starting point used. At the time, the amendment allowed for full inflation and then it ballooned, she said. Thus, the starting point is crucial, but the adjustment is not as important.

COMMISSIONER DESIGNEE TANGEMAN answered that the starting point in 1982 was a number that was fairly accurate at the time, but it was adding full inflation and full population growth year after year. He said that it was making the line too steep, which is why it is currently at \$10 billion.

2:44:42 PM

MR. KING added that part of reason is that inflation and population factors were applied to the previous spending limit rather than to the total expenditures. He suggested that it meant compounding growth on money that was not spent, which is how the state got out of balance. The proposal would reset that every year by using a three-year average of actual spending. He agreed it is more important to adjust to actual spending than to use the actual inflation or population figures.

CHAIR HUGHES said that the adjustment for growth could use some kind of calculation using the statewide GDP [gross domestic product]. If so, the cap would be based on economic growth, which would allow for large increases during boom times. She questioned why government growth should correlate with private industry growth, which she did not think should occur. She said that things do not need to grow proportionately. She suggested that the Senate Finance Committee may wish to consider using the GDP. She wanted the record to reflect concern that the fact there is more money in the private sector does not mean more funding needs to be directed to government growth.

SENATOR MICCICHE remarked that Mr. King indicated that Alaska does not see the same correlation between the budget and the GDP, which is why the adjustment is set. He clarified that this does not set the base. His goal is to reduce the budget wherever possible. He said this base will adjust every year. The more the budget is reduced the more the base will be reduced, he said.

This amendment reflects the growth rate and has nothing to do with cutting the budget, or spending outside of the cap. It

simply would set the curve. He offered his belief that the governor's curve is unattainable. He said he does not think any economist in the world would disagree. He said, "It's not about cutting." It is about what happens to inflationary growth and spending after that. He said, "If you think you can afford the same apple ten years from now, you can, but only if you keep buying progressively smaller apples until there is not much left worth eating." He said he would like to hear from the administration, but he said the curve is more realistic and manageable going forward.

2:48:06 PM

COMMISSIONER DESIGNEE TANGEMAN said he likes the analogy, which is accurate. The administration does not disagree with the amendment to change the formula and address it in a slightly different manner since is still fairly constrictive, which is the goal. He said, "If you are interested in restricting spending, it must be something that is not going to be out of line in five years." As Mr. King pointed out very astutely, this is not being compounded off the previous year's cap amount. Instead it is derived from the previous year's spending amount. Although it may appear to be a "flatter" line, it is based on actual budgets from previous years, he reiterated.

2:49:13 PM

SENATOR KIEHL said that he appreciated Commissioner Designee Tangeman's comment that it should be up to future elected officials and the executive branch to decide on spending priorities. In terms of this limit and the five year or three-year average, which is pegged to prior years rather than a single fixed point, he expressed concern that Amendment 2 does not have an allowance for population growth. He recalled that U.S. Senator Sullivan campaigned on a sustained 3.5 percent economic growth for long periods of time. He related his understanding that the 40-year growth rate in Alaska's population is about 1.5 percent. Allowing only for inflation would put the state in a difficult spot if the state built a gasline or otherwise had significant growth. He recalled Senator Reinbold's desire for restraint. He asked whether the five-year average to actual spending could constrain spending below actual population growth.

MR. KING answered yes, that it would restrict it without accounting for population growth and it does not allow for an escalation for population growth. The question becomes whether the legislature believes that it is necessary to include both the full inflation and the full population growth escalation. He

said that history has shown that the economy has been able to grow at a faster rate than that government has needed to grow, at least in Alaska's history. The last time the state had an economic boom the population more than doubled and government spending did not.

This leads to a question of why that is the case. Academically, one can see how technology, productivity, and economies of scale have affected the economy. For example, just because student population increases by 10 percent doesn't mean that schools need ten percent more teachers. And just because inflation grows by 5 percent does not necessarily mean everyone's wages need to increase by 5 percent because technological and other economic factors are pushing down on prices.

MR. KING said that the current law in the [Constitution of the State of Alaska] that allows the full consideration of inflation and population is generous. The question for the legislature is what amount less than that is the proper amount. The governor put forth a proposal that was much more limiting [in SJR 6], and under Amendment 2, it is a little less restrictive. He said, "If you allowed zero growth, I would say that at some point you might run into a situation where the population would not be allowed to grow because services would not be able to be provided." However, he did not think that is the situation in this case.

[2:53:05 PM](#)

SENATOR KIEHL acknowledged that is the reason to use population instead of economic growth as one factor. However, he also appreciated knowing that by floating the period used for the calculation of the cap, in the sustained growth timeframe, it would not be able to increase the size of government as fast as population and inflation increased. He said he has a fundamental disagreement with Commissioner Designee Tangeman that it is a good idea to choose troopers or teachers when the population and the economy is growing.

He said the existing language only lists "inflation," which leaves it to the legislature to define what inflationary measure to apply. He directed attention to [Page 1, lines 6-7 of Amendment 2, referred to as A.3], which read, "...the Consumer Price Index for Anchorage, Alaska, as prescribed by law." He asked for further clarification on the reason to use the Consumer Price Index (CPI) for Anchorage, but then allow the legislature to "fiddle" with it.



SENATOR MICCICHE replied that he did not see it that way. He said that the CPI for Anchorage is prescribed by law. That is the index that would be used. He considered other national indexes but did not believe they were adequately reflective of the real cost of doing business in Alaska. He offered his belief that the CPI for Anchorage is the best one to use.

SENATOR KIEHL offered to follow-up with Legal Services later. He interprets this to mean that a future legislature could direct the Department of Labor & Workforce Development to write its own Consumer Price Index for Anchorage by law.

SENATOR MICCICHE asked the Department of Law to respond.

[2:55:34 PM](#)

MS. MILLS related her understanding that the question surrounds the specific point to the language "Consumer Price Index for Anchorage, as prescribed by law." She said that the existing amendment, similar to the governor's proposal, specifically refers to [Page 1, lines 9 - 10 of SJR 6], "derived from federal indices as prescribed by law, ..." She said that [Amendment 2, lines 6-7] reads, "the change in inflation shall be based on the Consumer Price Index for Anchorage, Alaska, ..." She said that points to a specific index. It goes on to read, "as prescribed by law" and she was unsure of what would need to be clarified in statute.

[2:56:42 PM](#)

SENATOR MICCICHE responded that Amendment 2 refers to the Consumer Price Index for Anchorage. He said he thinks that is quite clear. He said he understands the concern, but he is not going to waste a lot of time on it. He asked the record to reflect that it refers to the Consumer Price Index for Anchorage.

SENATOR REINBOLD recalled that Mr. King had said 0.8 and 1.1 would be the difference. She asked whether inflation has gone over that historically.

MR. KING responded that other than in times of economic recession, inflation is typically above that rate.

SENATOR REINBOLD asked whether inflation can be really significant in other countries.

MR. KING answered yes. He stated that several countries print money to deal with debt issues, which can result in hyper-

inflationary periods. He said that the State of Alaska does not have the ability to print money so the state would not be the driving force for that type of problem in Alaska. Theoretically, the federal government could print money.

SENATOR REINBOLD asked whether this has the potential to raise the appropriation limit.

MR. KING answered yes, that the consideration of inflation allows the budget to grow in response to inflation. He related a scenario in which periods of high inflation happened, and the 5-year averaging would smooth it out. If it only occurred in one year, it would not be a spike and a drop. However, in response to rising costs of services the government provides, the legislature would have the ability to increase its budget accordingly, he said.

2:59:31 PM

SENATOR REINBOLD related her understanding that as the economy grows, less government is needed. She remarked that she does not consider them as services, but rather that people become more self-sufficient, that they have jobs, and they "get their act together." She suggested that more infrastructure and easier ways to access resources might also occur. She said that if the legislature is going to propose changes to the Constitution [of the State of Alaska], it is important to make sure that it is doing the right thing and she certainly wants to limit government, with as few loopholes as possible for government to grow when economic growth occurs.

3:00:19 PM

CHAIR HUGHES asked when inflation has risen, historically, whether the smoothing factor of the five-year averaging would take care of the spikes. She related her understanding that it typically only lasts a few years.

MR. KING agreed that except for a high inflation period in the late 70s, with sustained double-digit inflation, it has been very rare to have more than several years in which inflation is much higher than 2.5 percent. In further response to Chair Hughes, he recalled that it was 4 - 5 years, although he would need to double check.

CHAIR HUGHES asked whether he was comfortable with the change and that the five-year smoothing factor would likely address Senator Reinbold's concerns.

[3:01:24 PM](#)

COMMISSIONER DESIGNEE TANGEMAN answered yes, that the administration is comfortable with this formula.

[3:01:29 PM](#)

CHAIR HUGHES removed her objection.

SENATOR REINBOLD objected.

[3:01:48 PM](#)

SENATOR MICCICHE remarked that loophole means that there would be some way out of the spending limit or some way around it. He said that the legislature simply needs to cut and reduce the state's spending and many of us believe this, although not everyone does. The appropriation limit has nothing to do with that because as the budget is cut, it resets the baseline. The approach [under Amendment 2] is a more realistic curve. In fact, reviewing the 10-year period from FY 03 - FY 19, the changes are almost exactly the same. He related his understanding that [inflation] ranges about one-tenth of a percent every couple of years. He said that this figure does not accelerate over time, that it is steady and is below the interest rate and below the Anchorage CPI. He offered his belief that this is a more realistic way of dealing with that increase.

SENATOR REINBOLD clarified that what she meant by loophole is it provides just one more opportunity to increase the appropriation limit. She said it seems as though the legislature is constantly finding them. "I'm going to be a no vote," she said.

[3:03:10 PM](#)

A roll call vote was taken. Senators Micciche, Shower, and Hughes voted in favor of Amendment 2 and Senators Reinbold and Kiehl voted against it. Therefore, Amendment 2 passed by a 3:2 vote.

[3:03:40 PM](#)

CHAIR HUGHES remarked on the time constraint before taking up Amendment 3, which members briefly discussed.

[3:04:58 PM](#)

At-ease.

[3:06:25 PM](#)

CHAIR HUGHES recessed the meeting.

[6:01:32 PM](#)

CHAIR HUGHES reconvened the meeting at 6:01 p.m. Present at the call to order were Senators Micciche, Reinbold, Shower, Kiehl, and Chair Hughes.

6:02:09 PM

CHAIR HUGHES remarked the committee will continue to hear SJR 6. She advised the public that written testimony could be submitted to senate.judiciary@akleg.gov.

6:03:37 PM

CHAIR HUGHES opened public testimony on SJR 6.

6:04:01 PM

DEBORAH HOLLAND, representing herself, Anchorage, testified in support of SJR 6 because she would like a sustainable budget and wants the legislature to cut the budget.

6:04:33 PM

ALLEN HIPPLER, representing himself, Anchorage, testified in support of SJR 6 because the state needs to balance its spending, revenues, and expenditures and still retain the balance in the permanent fund.

6:04:49 PM

TIM ROBINSON, representing himself, Wasilla, testified in opposition to SJR 6 and the governor's budget since the governor's budget is short sighted, ill advised, and sure to wreak havoc on Alaska. He offered his belief that the state needs a progressive income tax with a credit for the PFD [permanent fund dividend]. He said he sent written comments with his specific suggestions.

6:06:08 PM

CHAIR HUGHES remarked that the committee was not taking public testimony on the budget and that this hearing was related to a constitutional amendment to institute a state constitutional spending cap.

6:06:27 PM

LESLIE HVAMASHAD, representing herself, Houston offered her support for SJR 6, stating that "real Alaskans" will vote in support of SJR 6.

6:07:04 PM

JOHN MORIN, representing himself, Soldotna, testified in support of SJR 6 because he is tired of the liberals.

[6:07:26 PM](#)

SAM ALBANESE, representing himself, Eagle River, offered his support for SJR 6 since the state needs a cap to be responsible about its spending. Alaska does not have a revenue problem but a spending problem, he said.

[6:07:55 PM](#)

CHARLES SIMON, representing himself, Hooper Bay, testified in support of SJR 6.

[6:08:27 PM](#)

BARBARA HANAY, representing herself, North Pole, testified in support of SJR 6 and the governor's package. She said that she is an economist who has lived in the state for 30 years.

[6:08:57 PM](#)

LYNN LOWRY, representing himself, Wasilla, testified in favor of the PFD and not for a cap.

[6:09:49 PM](#)

CAROLINE MALSEED, representing herself, Juneau, stated her opposition to SJR 6 because the constitution provides long-term stability to the state. She said that elected officials should make shorter term fiscal decisions rather than to have appropriations imbedded in the constitution. She emphasized that the governor and the legislature need to have the flexibility to create appropriation standards in response to the needs and values of the people in Alaska.

[6:11:47 PM](#)

SENATOR SHOWER asked if the Constitution [of the State of Alaska] has a spending limit and whether this resolution would just tweak it.

MS. MALSEED responded that she did not think that the Constitution [of the State of Alaska] needs to be tweaked. In further response to Senator Shower she said she understands a spending limit currently exists in the constitution. She said she does not think it needs to be adapted.

[6:12:25 PM](#)

BRIDGET SMITH, representing herself, Juneau, testified in opposition to SJR 6 since Alaska has one of the best constitutions in the U.S. She said that SJR 6 would limit the legislature's power to appropriate, and the people's power to influence the decisions. She expressed concern with Section 16. She said that Judge Tom Stewart brought constitutions from other

states to use as models for our constitution. Further, the current constitutional spending limit is so generous that it has never been used. She said that SJR 6 would limit the legislature's power to appropriate and limit the people since they elected their representatives.

[6:14:39 PM](#)

KEN FREDERICO, representing herself, Wasilla, testified in support of SJR 6 because the state needs to rein in spending.

[6:15:53 PM](#)

OLIVIA FELLERS, representing herself, Wasilla, testified in support of SJR 6 to rein in legislators, implement efficiencies, and to leave the PFD alone. She offered her belief that Governor Dunleavy has the right plan in mind and needs public support. In response to Senator Micciche, she responded that she supports SJR 6.

[6:17:02 PM](#)

EDWARD MORAN, representing himself, Wasilla, testified in support of the governor's budget. He said the state needs more discipline in government spending and must reduce waste. In response to Chair Hughes, he offered his support to SJR 6 and the spending cap.

[6:17:57 PM](#)

KEN BROWN, representing himself, Soldotna, voiced his support for SJR 6 and the legislators who support it. He expressed opposition to legislators who oppose it.

[6:18:36 PM](#)

CAROLYN PORTER, representing herself, Palmer, testified in support of SJR 6. She said that tweaking the spending cap is a means to cut spending since the legislature has been over appropriating. She urged members not to cut dividends or implement taxes, but to reduce spending.

[6:19:28 PM](#)

FRANK GOLDTHWAITE, representing himself, Sterling, testified in support of SJR 6. Government should have a spending limit just as Alaskan households limit their spending. He urged members not to touch the [corpus of] the permanent fund and to distribute earnings. He supported "getting something in the coffers" and remarked that "spending is out of control."

[6:20:55 PM](#)

MARILYN MENISHNUCHE, representing herself, Petersburg, said she strongly opposed SJR 6 because she does not support any amendments to the Constitution of the State of Alaska.

[6:21:20 PM](#)

DARREN FIDLER, representing himself, Wasilla, stated his total support for a spending limit [SJR 6]. After asking whether a sales tax was under consideration in SJR 6 and learning it was not, he offered his total support for the spending cap in SJR 6.

[6:22:24 PM](#)

MARIETTA DAVIS, representing herself, Petersburg, testified in support of SJR 6.

[6:22:52 PM](#)

NORMAN CLARK, representing himself, Kotzebue, testified in opposition to SJR 6. He said he hopes Governor Dunleavy will change the law to prevent reducing the permanent fund dividend so Alaskans will have more money. He expressed concern that too many out of state people come to Alaska and apply for the permanent fund dividend.

[6:23:43 PM](#)

JOAN TRUITT, representing herself, Big Lake, testified in full support of SRJ 6 to reduce spending.

[6:23:55 PM](#)

GREGORY WHITE, representing himself, Anchorage, testified in support of SJR 6 to have a spending limit and prevent legislators from overspending.

[6:24:31 PM](#)

JACK JOHNSON, representing himself, North Pole, testified in support of SJR 6 to reduce spending.

[6:25:19 PM](#)

EMILY MESCH, representing herself, Juneau, testified in opposition to SJR 6 because it will not have a short-term effect and would limit the legislature's ability to deal with unforeseeable problems. She characterized it as a solution in search of a problem.

[6:26:01 PM](#)

LYNDA MYERS, representing herself, Anchorage, testified in support of SJR 6 due to her concern that the legislature has overspent to the point it now wants to take money set aside for the people when the permanent fund was established while it

gives itself raises. She further expressed concern about the residency requirements to qualify for the permanent fund dividend.

DAVE DANEZINE, representing himself, Kasilof, testified in support of SJR 6. He said he would like legislative sessions limited to 90 days, and the state to stop using salt on highways and bridges.

[6:28:46 PM](#)

SHOSHANA KUEN, representing herself, Fairbanks, testified in opposition to SJR 6 since it would be difficult to remove a spending cap and it could adversely affect future generations.

[6:29:21 PM](#)

GREG GARRIS, representing himself, Talkeetna, testified in favor of SJR 6.

[6:29:46 PM](#)

BRIDGETTE VAUGHN, representing herself, North Pole, as a 30-year resident, testified in support of SJR to cap government spending and ensure Alaska's great wealth survives. She urged members not to cut education first.

[6:30:57 PM](#)

TANYA LANGE, representing herself, Kenai, testified in support of SJR 6 because the state needs to cut spending and get control over the budget without taking the people's [permanent fund dividend].

[6:32:11 PM](#)

ARTIS SELLIERE, representing himself, Big Lake, testified in support of SJR 6 because he disagrees that a spending cap will tie the legislature's hands. He said that government can do with less, just as people must cut their household budgets when they have less income.

[6:33:07 PM](#)

GUY WHITNEY, representing himself, Ketchikan, testified in support of SJR 6. He echoed the previous testifier who urged members to cut the spending just as his family must budget if their income is reduced.

[6:33:41 PM](#)

TIM STATON, representing himself, Fairbanks, offered his support of SJR 6 because a spending cap is long overdue to protect the



permanent fund dividend (PFD) program. He urged members to return the PFD that Governor Walker cut.

6:34:35 PM

COLLEEN BAGOT, representing herself, Palmer, as a life-long Alaskan, testified in support of SJR 6 in order to [limit government spending] and prevent government from stealing from the people.

6:35:20 PM

LINN MCCABE, representing herself, Big Lake, testified in support of the constitutional spending cap to give the people a vote in the next general election. The current spending is completely irresponsible. She said she supports a balanced budget. The legislature has proven over and over again that it cannot self-regulate. She related her understanding that if the constitutional spending limit had been implemented 12 years ago, the state would have \$29 billion more plus interest in the permanent fund.

6:36:37 PM

LARRY BEACH, representing himself, Wasilla, testified in support of SJR 6 and cautioned that legislators who do not follow the will of the people will not be re-elected. He noted that the hearing last week on SB 23 had overwhelming support, but the legislature is not paying any attention.

6:38:00 PM

JERRY BAGNESCHI, representing himself, Wasilla, stated he has been an Alaska resident since 1974. When the permanent fund was established the state had a "rainy day" account and an energy account in case of "bad times." The legislature spent all the money and now wants to take the people's money, he said.

6:38:47 PM

ROSEMARY LEBOWITZ, representing herself, Hoonah, testified in support of SJR 6 because it seems wise to conserve state spending and prevent a state tax that would put government's hands right into our pockets.

Several senators made anecdotal comments.

6:40:44 PM

MICHAEL GERENDAY, representing himself, Wasilla, testified in support of SJR 6 to institute a spending cap. He said he does not agree with state spending, and that the permanent fund is the people's money. He stated that his family is poor, that good

jobs are not available, and he relies on the permanent fund dividend to survive.

[6:41:41 PM](#)

JARED JORGENSEN, representing himself, Soldotna, testified in support of SJR 6 to provide a spending cap.

[6:42:46 PM](#)

KATIE BOTZ, representing herself, Juneau, testified in opposition to SJR 6. She said that the legislature needs to budget money wisely. She said that the state needs an income tax and should reduce the permanent fund dividend. She expressed concern about seasonal workers who take earnings out of state. In response to Chair Hughes, she said she currently opposes SJR 6, but hopes to see it back in the future.

[6:45:52 PM](#)

ELIZABETH SWEET, representing herself, North Pole, testified in support of SJR 6 to reduce spending. She said she also supports SB 23 and 24.

[6:46:34 PM](#)

JOHN MILLER, representing himself, Wasilla, testified in support of SJR 6 because he supports the financial plan the governor laid out during his town hall meeting. He said he would like a spending cap in the constitution.

[6:47:20 PM](#)

STACEY SEEGER, representing herself, Eagle River, testified in support of SJR 6.

[6:48:00 PM](#)

JAMES SQUYERS, representing himself, Rural Deltana, testified in support of SJR 6.

[6:48:20 PM](#)

PAMELA GOODE, representing herself, Rural Deltana, testified in support of SJR 6. She said the problem has always been state spending and this will remedy future state spending.

[6:48:53 PM](#)

FRANK WHITESIDES, representing himself, Ketchikan, testified in support of SJR 6.

[6:49:12 PM](#)

DAVID AUSTIN, representing himself, Hoonah, testified in support of SJR 6.

[6:49:27 PM](#)

RONALD HOWARD, representing himself, Ketchikan, testified in support of SJR 6.

[6:49:55 PM](#)

KIRSA HUGHES-SKANDIS, representing herself, Juneau, testified in opposition to SJR 6 because she opposes putting legislative choices in the constitution. She said it was not necessary 30 years ago when the income tax was repealed. She offered her belief that SJR 6 would limit the state from being flexible and adaptable when it needs to address unknown economic future events.

[6:50:23 PM](#)

GAIL LIMBAUGH-MOORE, representing herself, Soldotna testified in support of SJR 6.

[6:50:49 PM](#)

KAREN PERRY, representing herself, Wasilla, speaking as a state resident since 1982, testified in support of SJR 6. She said that her family is Dunleavy strong.

[6:52:04 PM](#)

JUDITH CLARK, representing herself, Hoonah, offered conditional support of SJR 6 if it would prevent taxes since the prospect of income or sales taxes is an untenable option, with a possible annual review if conditions change. She acknowledged that no one likes the proposed cuts.

[6:52:34 PM](#)

JASON DUNN, representing himself, Wasilla testified in support of SJR 6 and the governor's plan. He suggested that before legislators "steal the people's money," they should cut 10 percent of their income. He added that disabled veterans rely on the PFD.

[6:54:05 PM](#)

RALPH VERNACHIO, representing himself, Chugiak, testified in support of SJR 6.

[6:54:42 PM](#)

RON GILLHAM, representing himself, Soldotna, testified in support of SJR 6 since the spending cap will keep the government in check.

[6:55:10 PM](#)

DONNA AUSTIN, representing herself, Hoonah, testified in support of SJR 6.

[6:56:06 PM](#)

DOUGLAS LOWRY, representing himself, Fairbanks, testified in support of SJR 6 to keep spending within our means and to retain the PFD, which rightfully belongs to the citizens and should not be used to fund government.

[6:57:05 PM](#)

At-ease.

[7:01:20 PM](#)

CHAIR HUGHES reconvened the meeting.

[7:01:49 PM](#)

SENATOR MICCICHE moved to adopt Amendment 3, work order 31-GS1068\ A.1, Wallace, 3/22/19, which read as follows:

31-GS1068\A.1  
Wallace  
3/22/19

### **AMENDMENT 3**

OFFERED IN THE SENATE  
TO: SJR 6

BY SENATOR MICCICHE

Page 2, lines 8 - 12:

Delete all material and insert:

"(6) from a non-State source in trust for a specific purpose, including revenues of a public enterprise or public corporation of the State that issues revenue bonds; and"

Renumber the following paragraph accordingly.

CHAIR HUGHES objected for discussion purposes.

SENATOR MICCICHE referred to page 2, lines 8-12 of SJR 6 to Section 16(a)(6)-(7) and stated that Amendment 3 would combine the two paragraphs. It would still allow money held in trust by the state or received from the federal government for a particular purpose, or from a source other than the state or federal government for a specific purpose, such as a donation. However, Amendment 3 would allow other [funds] from a non-state

source to be used. For example, the public could decide to put a project on the ballot if they wanted to build a bridge and establish a toll on the bridge. He envisioned that the Alaska Marine Highway System (AMHS) could decide it would like to cover more costs related to coastal communities. Amendment 1 would allow the public to move something forward that is outside the appropriation limit established by Article IX, sec. 16 of the Constitution of the State of Alaska. This language would not allow the legislature to go outside of the appropriation limit, but it would allow the public to do so, which is the intent of Amendment 3.

7:03:30 PM

SENATOR KIEHL asked how Amendment 3 would restrain the legislature from creating a public corporation to do the same activity the sponsor of Amendment 3 described.

SENATOR MICCICHE responded that it does not, since the state is already included in paragraphs (6) and (7). However, his specific rationale to add this language is to allow the public to create a public corporation or enterprise to meet the public's need outside of the cap in proposed Section 16.

7:04:09 PM

SENATOR KIEHL asked for further clarification on the language "in trust" [on line 3 of Amendment 3]. He related his understanding that in trust has a specific legal meaning. It seemed as though the sponsor of Amendment 3, was using it to mean "money that the state holds for a specific purpose," but not a legal trust with "lock up" provisions. He recalled that private sector donations for a specific project would be included in the "in trust" language.

SENATOR MICCICHE answered that existing trusts, such as the Alaska Mental Health Trust Authority (AMHTA), the [Public School Trust Fund], and other existing trusts are already outside of the cap. Amendment 3 would specifically apply to new projects that might arise after the cap, if passed, is established.

7:05:28 PM

SENATOR REINBOLD asked whether Amendment 3 could include corporations such as the [Alaska Gasline Development Corporation (AGDC), the Alaska Industrial Development and Export Authority (AIDEA), the Alaska Railroad Corporation (ARRC), or the Alaska Energy Authority's (AEA) Power Cost Equalization (PCE)]. She said this seemed like a "broad wide-open door."

SENATOR MICCICHE answered that those were already public corporations, which are outside of the spending cap. He said this would not open up anything additional, but the language in Amendment 3 would apply to a new project that may arise that the public supports.

7:06:07 PM

SENATOR REINBOLD asked whether the Department of Law could respond. She further asked if it could mean a \$40 billion gasline.

MS. MILLS responded that that this is language that exists in the current constitutional appropriation limit.

7:06:56 PM

SENATOR REINBOLD referred to paragraph (6), which read as follows:

"(6)from a non-State source in trust for a specific purpose, including revenues of a public enterprise or public corporation of the State that issue revenue bond; and"

She said that it sounds like a dedicated "non-State source," "including revenues of a public enterprise or public corporation," which sounds like it is from public corporations like AIDEA, ARRC, or the AGDC. It seemed to her that this could be "busting through a cap" if people were creative enough. She asked whether people could build a gasline.

MS. MILLS answered that the language does not go a lot broader than what it is replacing. She said that revenue bonds are already exempted. She explained that the state can constitutionally issue revenue bonds if revenues are anticipated to cover them. This language does open it up a little broader than the current two exceptions, but not by a whole lot.

SENATOR REINBOLD asked for further clarification on what Amendment 3 does and what it would allow.

MS. MILLS said that the amendment would encompass federal appropriations, which are considered held in trust by the state to use for a specific purpose. It would also encompass donations, or a public private partnership, in which the private partnership contributes some funds. The funds cannot be used except for the purpose the private partner indicated. She said that public corporations issue revenue bonds for a specific

purpose. In addition, as Senator Micciche stated, the normal trusts are outside the cap.

7:09:07 PM

SENATOR REINBOLD related her understanding that Amendment 3 would create a loophole and allow a lot of federal money to come in, including for Medicaid expansion. She said it seems as though this could undermine the spending cap.

MS. MILLS responded that federal receipts are outside the cap and [Amendment 3] would not change that aspect.

SENATOR REINBOLD asked whether this would make Alaska more dependent on federal funds. She said that she could not figure out the specific reason.

7:10:13 PM

CHAIR HUGHES related a scenario in which the Knik Arm crossing was built as a toll road. Prior to the project, the state was at the cap for plowing the Glenn Highway. Using the toll to maintain the bridge might result in funding cuts for road maintenance for plowing. The project would need to support itself. She said she understands her concern, but this does not create a loophole. She related that one thing the legislature is considering is to restructure the ferry system. It might make sense to create a public corporation to partner with the private sector and the legislature needs to allow that to happen. The corporation would need to be able to function outside the appropriation limit. She said, "So I'm supporting the amendment."

7:11:50 PM

SENATOR MICCICHE acknowledged the examples were good ones. He said, "The thing it adds is you either trust the people of Alaska or you don't. This isn't about legislators. It's about people of Alaska deciding." When the budget is cut, which is separate from SJR 6, it will empower the people of Alaska. He said, "They would be paying for it. We wouldn't." Amendment 3 would allow this to occur.

7:12:49 PM

SENATOR REINBOLD expressed her frustration. She asked for further clarification from the Department of Law on Amendment 3 and whether the governor supports it.

7:13:18 PM

MS. MILLS deferred to Commissioner Designee Tangeman to weigh in on the administration's stance. She said generally speaking that Chair Hughes and Senator Micciche covers the DOL's view on the effect of Amendment 3. She clarified any state general fund appropriation that subsidized a public corporation would still be under the appropriation limit. This would only relate to any revenue a public corporation would receive for a specific purpose.

[7:14:03 PM](#)

COMMISSIONER DESIGNEE TANGEMAN said the administration does not see a problem with Amendment 3.

SENATOR REINBOLD referred to page 2, lines 8-12, and read the language that would be deleted from SJR 6, which read as follows:

(6) of money held in trust by the State or received from the federal government for a particular purpose;

(7) of money received by the State from a source other than the State or federal government that is restricted to a specific use by the terms of a gift, grant, bequest, or contract;

She referred to paragraph (6) of Amendment 3, which read as follows:

"(6) from a non-State source in trust for a specific purpose, including revenues of a public enterprise or public corporation of the State that issues revenue bonds; and"

SENATOR REINBOLD asked whether this language would allow for bonding.

MS. MILLS deferred to the sponsor of Amendment 3 for the intent. However, this is meant to cover the items already covered outside the cap, which are considered held in trust because the funds cannot be spent except for the purpose for which they have been framed. She offered her belief that this would add the possibility for a public corporation or enterprise to take on a large project or some other form of program that requires specific revenues from a non-state source.

[7:15:57 PM](#)



SENATOR MICCICHE said that one could argue it was included in the language in paragraphs (6) and (7). He said he wanted to clarify that the public corporation or enterprise issuing bonds would be outside of the cap.

7:16:26 PM

SENATOR KIEHL stated that the clarification of "held in trust" helped. He referred to the language "from a non-State source." As Ms. Mills and Senator Micciche stated, the Alaska Mental Health Trust Authority (AMHTA) and the Public-School Trust Fund (PSTF) are already not subject to the cap in the existing [Constitution of the State of Alaska]. He asked for further clarification on how the AMHTA and Public School Trust Fund could be considered as a non-state source. He acknowledged that in the origins of the AMHTA this was so, but in the decades since then, the AMHTA has become a state entity, managed by state employees, and it generates revenue from investments made by the state and through land sales.

MS. MILLS replied it is because of how the entities originated. She explained [the revenue] can only be used for a specific purpose pursuant to federal law. For example, the whole purpose of the AMHTA and the Public School Trust Fund acquiring assets was to raise revenues, but it is done so based on the original land grant. She said this would be interpreted as being held for a specific purpose and that purpose came from the original land grant, not from the state.

SENATOR KIEHL asked for further clarification on the transition point since the AMHTA is a state entity. He pondered whether one original dollar was a non-state source, it is never considered a state source. He said his interest is to ensure that the language has the described intent.

7:19:02 PM

MS. MILLS highlighted the purpose of [the resolution] is to determine how the legislature will calculate the appropriation limit and not to set out new constitutional guidelines by these exceptions. It is important to determine what falls within the cap and what falls outside of the cap. Just as "in trust" can have a very specific meaning in certain contexts, she interprets the language to mean that revenue would be used for a certain purpose. Certainly, the state runs up against the dedicated fund clause. However, this is not about the dedicated funds clause or whether it would be considered dedicated from a legal standpoint. She said the distinction is where the funds originated from and in terms of the consideration between a non-

state source and a state source, it would need to be evaluated on a case-by-case basis. She said she could not give a clear answer without reviewing the specific set of facts or reviewing the Alaska Mental Health Trust Authority (AMHTA).

7:20:38 PM

SENATOR KIEHL offered his support for Amendment 3 because he supports the change Senator Micciche intends. He referred to [page 1,] line 8 of SJR 6 to the first ten words, which is clear. He suggested that as SJR 6 moves forward that it would be worthwhile to review it further. He characterized the change intended in Amendment 3 as being good.

7:21:21 PM

CHAIR HUGHES asked whether the University of Alaska] and Alaska Marine Highway System, as currently structured, are public enterprises and if the tuition and fares would be outside the cap.

MS. MILLS recalled hearing the question on the university asked previously. The [Constitution of the State of Alaska] describes the University of Alaska as a corporate body. She offered to research the tuition question and respond back to the committee. In terms of the AMHS, it currently is a division of a department, so it is not a public corporation and it does not have a separate legal identity. She said public corporations are state instrumentalities, so the liability is held within the public corporation and does not open up the state to liability. The entities can be sued on their own. The AMHS would not fall under this currently, she said.

7:23:01 PM

SENATOR SHOWER said that the committee is really discussing growing the operating and capital budgets. He referred to Amendment 3 and asked whether the legislature could spend more funds with its appropriations for the operating and capital budgets under this language. He interpreted it to mean a non-state source, which is not included in the appropriation limit since it is outside the cap.

MS. MILLS answered that this would be an exception so it would be outside the appropriation limit.

SENATOR SHOWER asked for further clarification that under Amendment 3, the legislature would not be spending more money in the operating and capital budget in the year this occurs. He highlighted the concern with the language in Amendment 3 is

related to concerns about increased spending. He asked whether [Amendment 3] would allow the state to grow its operating and capital budget.

MS. MILLS answered that this does not require any specific amount of spending. Instead, it is all about the calculation. In terms of the operating and capital budget as it stands today, the exceptions would be removed from the cap, and a three-year average would be based on that, but this does not create any new spending or take it away.

SENATOR MICCICHE related his understanding that essentially if state dollars were going to be spent on one of these projects that the funds would be under the cap, whether the funds were operating or capital budget funds, and the rest would need to come from some other financial source.

MS. MILLS answered yes, that is correct.

[7:25:18 PM](#)

SENATOR REINBOLD asked whether this could allow a public corporation, such as Alaska Railroad Corporation (ARRC), to spend significantly more, so long as the public entity could get funding from the federal government. She asked whether this would allow the opportunity for spending to increase, just not with UGF [unrestricted general fund] or DGF [designated general fund].

[7:25:57 PM](#)

MR. KING said that if you create a public corporation that performs a function and raises its own revenues, those revenues can be layered on top of the unrestricted general fund [UGF] spending. Amendment 3 would allow a public corporation or public enterprise that generates its own revenues to "grow" the government. It would not matter if the funding was brought into the state via the federal government or the private sector as long as it is not from a tax. The appropriation limit avoids raising government spending through taxation, he said.

SENATOR REINBOLD expressed concern when she recalled former Senator Stoltz had an \$80 million item because the federal government wanted him to do something related to the Alaska Railroad. She expressed further concern that "we got stuck with it our budget." She has seen public corporations cost the state. She acknowledged that many Alaskans support a gasline, but many do not. She said she views this as just another opportunity to

"bloat government." She said she was not comfortable supporting [Amendment 3.]

7:28:12 PM

CHAIR HUGHES recalled that the funding previously mentioned, perhaps \$80 million, was for positive train control and the state funding would have been under the cap.

MR. KING added for further clarification, that it would also be true for the creation of a public corporation or any trust. The money that goes to capitalize that new endeavor would also be subject to the cap.

7:28:41 PM

SENATOR MICCICHE said, "It's only the money from somewhere else that is not under the cap, whether it's a contribution, a donation, an assessment or if there's a federal program that is outside of it. It's only the money outside of state spending that would be out of the cap, so there is not a way to grow state spending because you would be capped off at the appropriation limit."

7:29:09 PM

CHAIR HUGHES directed attention to [the Alaska Marine Highway System]. If the AMHS was restructured as a public corporation and the fares were used to build smaller, more efficient, cost effective vessels, such as catamarans, the state would want it to do so since it would not fall under the cap. She said that public corporations have a responsibility to be efficient and effective. She would hope that they would raise funds for purposes that would be of benefit to Alaskans and actually save money.

7:30:09 PM

SENATOR REINBOLD said the AMHS has had opportunities to do so but she has not seen it happen; instead, the state subsidizes the ferry. She further recalled seeing subsidies for the Alaska Housing Finance Corporation (AHFC). She reiterated that she views this as a loophole. She said she is not comfortable with Amendment 3.

MR. KING clarified that if a public corporation is losing money and obtains a state subsidy, that the subsidy would fall under the cap. It is only the revenue the public corporation generates that would be excluded from the cap.

7:31:29 PM

CHAIR HUGHES removed her objection.

[7:31:38 PM](#)

SENATOR REINBOLD objected.

[7:31:45 PM](#)

A roll call vote was taken. Senators Micciche, Shower, Kiehl, and Hughes voted in favor of Amendment 3 and Senator Reinbold voted against it. Therefore, Amendment 3, was adopted by a 4:1 vote.

CHAIR HUGHES closed public testimony on SJR 6.

[7:32:18 PM](#)

At-ease.

[7:39:27 PM](#)

CHAIR HUGHES reconvened the meeting.

[7:39:34 PM](#)

SENATOR SHOWER moved to adopt Amendment 4, work order 31-GS1068\A.5, Wallace, 4/1/19.

31-GS1068\A.5  
Wallace  
4/1/19

**AMENDMENT 4**

OFFERED IN THE SENATE  
TO: SJR 6

BY SENATOR SHOWER

Page 1, lines 2 - 3:

Delete "and establishing the savings reserve  
fund"

Page 2, line 21:

Delete "savings"  
Insert "budget"

Page 2, line 22:

Delete "savings"  
Insert "budget"

Page 2, lines 28 - 29:

Delete "**savings** [BUDGET]"  
Insert "budget"

Page 3, line 4:  
Delete "savings [BUDGET] "  
Insert "budget"

Page 3, line 5:  
Delete "savings [BUDGET] "  
Insert "budget"

Page 3, line 13:  
Delete "savings [BUDGET] "  
Insert "budget"

Page 3, line 26, through page 4, line 1:  
Delete all material and insert:  
"Section 31. Budget Reserve Fund Transition. The repeal of Section 17(d) of Article IX in the 2020 amendments eliminates any repayment required under that subsection through the fiscal year ending June 30, 2021."

CHAIR HUGHES objected for discussion purposes.

SENATOR SHOWER explained Amendment 4. As previously discussed, [Amendment 1, which was withdrawn], contained two different topics. This is the first of two amendments. Amendment 4 removes the name change from the savings reserve fund and reverts to the budget reserve fund, commonly referred to as the CBR [constitutional budget reserve] fund. Throughout SJR 6, Amendment 4 prevents the name change.

SENATOR SHOWER characterized this as a cleaner approach.

7:40:33 PM

CHAIR HUGHES removed her objection. There being no further objection, Amendment 4 was adopted.

7:40:46 PM

SENATOR SHOWER moved to adopt Amendment 5, work order 31-GS1068\A.6, Wallace, 4/1/19.

31-GS1068\A.6  
Wallace  
4/1/19

#### AMENDMENT 5

OFFERED IN THE SENATE  
TO: SJR 6

BY SENATOR SHOWER

Page 1, line 7:

Delete "Appropriations"

Insert "Except as provided in (b) of this section, appropriations"

Page 2, following line 14:

Insert a new subsection to read:

"(b) The legislature may appropriate an additional amount in excess of the appropriation limit under (a) of this section for capital improvements, except that the amount for capital improvements made in excess of the appropriation limit in a fiscal year shall not exceed ten percent of the total appropriation limit for that fiscal year. Appropriations for capital improvements that exceed the appropriation limit shall not be used in calculating the appropriation limit in subsequent fiscal years."

Reletter the following subsections accordingly.

Page 2, line 26:

Delete "(b)"

Insert "(c)"

CHAIR HUGHES objected for discussion purposes.

SENATOR SHOWER said that this is the second part of [Amendment 1, which was withdrawn]. He said this reverts to the capital budget discussion. He characterized it as a safety valve for "good years," when revenue is high, and the legislature chooses to use it for capital improvements. This would not increase the size of government by increasing the operating budget. He read lines 7 - 12, subsection (b) of Amendment 5.

For example, if the total budget is \$3 billion, the operating and capital budget falls inside the appropriation limit. If the legislature chose to add 10 percent, or \$300 million, for capital improvements, the funding would be outside the cap, and must be used that year. This would give the legislature flexibility going forward to work on capital improvement projects it deems appropriate.

[7:42:40 PM](#)

CHAIR HUGHES said she appreciated the distinction of the term "capital improvements" rather than the capital budget terminology since the practice of placing programs in the capital budget has previously occurred.

7:43:02 PM

SENATOR REINBOLD asked whether this would apply to a one-time capital improvement, for example, related to an earthquake. She asked if the total budget was \$10 billion, if that meant the state could spend \$1 billion.

MR. KING answered that if the limit is \$3 billion, the legislature could only exceed the cap by 10 percent or \$300 million. He said to spend \$1 billion, it would be necessary to back out \$700 million from other operational costs.

SENATOR REINBOLD said that the state's budget is about \$10 billion.

MR. KING explained that the appropriations limit includes only items subject to the limit. He related that using the FY 19 budget, it would be about \$4.6 billion.

SENATOR REINBOLD said that the state could spend \$460 million on a project, such as earthquake repair or bridges, but it cannot be used in the calculation for the following year.

MR. KING answered yes, that is correct.

SENATOR REINBOLD asked whether the governor supports this.

7:45:11 PM

COMMISSIONER DESIGNEE TANGEMAN said the administration understands the purpose, but the administration does not support [Amendment 5] simply because it does allow growth outside of the intent of SJR 6.

SENATOR MICCICHE said that he intends on supporting [Amendment 5] because it keeps the capital improvement funding under a cap. The reason the amendment is being offered in this committee is because as it moves through the process, others will try to eliminate a cap on capital improvement. [Amendment 5] actually states that the most that can be spent on capital improvements, in years with excess revenue, is 10 percent above the appropriation limit. He surmised that anything from here on out gets worse. He offered his belief that Amendment 5 is a good line to draw. He said, "If someone supports this amendment,



they're saying it should be limited to 10 percent." In the past the capital budget has not been part of the appropriation limit. He characterized the approach taken by Amendment 5 as a bit of a safety valve since it would allow some additional spending but not at the level the legislature has seen in the past.

7:46:50 PM

SENATOR KIEHL asked for further clarification on Amendment 5. He offered his belief that unlike the earlier version, this does not place a limit on the amount of capital improvement appropriations.

MR. KING answered that is technically correct, that the amendment does not make any limitation on the total amount of capital [improvement] spending that can be incurred other than the legislature could theoretically spend the entire cap plus ten percent on capital improvements.

SENATOR KIEHL acknowledged that would be pretty unlikely.

7:47:48 PM

SENATOR KIEHL turned to how Amendment 5 would affect the legislature's ability to make a CBR [constitutional budget reserve] fund draw. He related his understanding that if the legislature invoked this provision that it could not make a CBR draw.

MR. KING answered that another provision of SJR 6 does allow a CBR draw in order to generate enough revenue to reach the appropriation limit. If the legislature wanted to fund government at the cap, but insufficient revenues exist to do so, it could draw funds from the CBR in order to fill the gap. However, the legislature could not reach into the CBR to fund the additional ten percent for capital improvements.

7:49:01 PM

SENATOR KIEHL asked whether [Amendment 5] would allow the legislature to tap into the CBR at all.

MR. KING answered yes, but only to the extent that the revenues are short of the appropriation limit.

7:49:46 PM

SENATOR KIEHL acknowledged that it is complicated to read "on the fly." He asked if the effective date of the additional capital improvement spend could be shifted back a fiscal year to

make a CBR draw if the legislature did not make a CBR draw the previous year.

MR. KING replied that in his view, the funds do not roll over so the funds cannot be carried forward to a future year if the legislature elects not to use them in one year.

MS. MILLS said that she thinks that is correct. The way these provisions function together, the legislature can only spend an extra ten percent on capital improvements if the excess revenues are flowing into the general fund (GF) to "get you there." If it was necessary for the legislature to draw from the CBR, the legislature would not have sufficient revenues to get to the ten percent.

SENATOR KIEHL acknowledged that is the intent, but he would like to be certain that is the effect.

[7:51:32 PM](#)

SENATOR SHOWER said that he understood the concern but asked to focus on the language in Amendment 5. He said that Amendment 5 strictly speaks to capital improvement appropriations. He reiterated the purpose, that in good years, with excess revenue available, the legislature can limit the additional appropriations for capital improvements to ten percent. The structure of SJR 6 is different. The legislature would use the CBR structure to [fill the gap] to the appropriation limit. He said [Amendment 5] is separate. There should be "no crossing the streams here," he said.

[7:52:54 PM](#)

SENATOR KIEHL suggested he would study it further. He asked how "capital improvement project" is defined.

MS. MILLS answered that capital improvements were defined elsewhere in Article IX [of the Constitution of the State of Alaska] related to government obligation (GO) bonds for capital improvements so that term would be interpreted in the same way. "If you could do general obligation bonds to fund a capital improvement, you could use this exception to spend ten percent of the appropriation limit on capital improvements," she said.

[7:53:52 PM](#)

SENATOR KIEHL asked whether it differs materially from the statutory definition.

MS. MILLS offered to review it since she does not have the statutory definition before her, but she would get back to the committee. She added that the current appropriation limit in Article IX refers to "capital projects" which could potentially be interpreted differently. However, she reiterated that "capital improvements" would be viewed as those projects for which the state can issue bonds.

[7:54:23 PM](#)

SENATOR KIEHL stated that many things meet the statutory definition of capital improvements that could range far afield from bricks, mortar, and asphalt. He offered his belief that the statutory definition comes pretty close to what can be capitalized. He argued that most of the Office of Information Technology, including salaries and telephone systems meet the definition of a capital improvement project in statute. He envisioned situations in which the state has sufficient revenue and uses this provision to get into trouble.

[7:55:25 PM](#)

CHAIR HUGHES asked for further clarification from the Department of Law as to whether the language in Amendment 5 would refer to the definition in the Constitution [of the State of Alaska], which she believes it does, rather than in statute.

MS. MILLS agreed that is correct. She explained that the Department of Law would look to what the constitutional framers meant by capital improvements, which is the brick and mortar, and infrastructure projects. She said that unless the sponsor's intent is different, that is how it would be interpreted. She said it is important that the record reflect what is intended because that will help to determine the legislative intent.

[7:56:11 PM](#)

SENATOR SHOWER asked to make it crystal clear. He said that his intent is that his amendment [Amendment 5] refers to "brick and mortar," including buildings, bridges, roads, and other things of that type. He does not mean ferry operations or other types of things. He emphasized that "he means building things." He asked to have Ms. Wallace speak to the definition.

MS. WALLACE replied that she largely concurs with the testimony from Ms. Mills regarding the way the term is used already in the Constitution [of the State of Alaska]. She offered her belief that as this language is placed into a revised constitutional amendment, the intent behind the term as it is being drafted

will be relevant to the conversation and will be captured by that phrase.

7:58:08 PM

SENATOR REINBOLD expressed concern with Amendment 5. She leans toward voting for it because of disasters and this has the potential to place a real cap on capital expenditures. However, the reason she is leaning not to support Amendment 5 is because she has seen so much deception in terms of real budget numbers. She said she has observed supplemental budget overruns being placed in the capital budget. She said she does not want any more room for government to grow. She said that Alaska is spending three and a half times per capita higher than the rest of the states. She asked whether the operating budget could be "stuffed," and this amendment could be used to fund the capital budget with an additional ten percent funding.

MS. WALLACE asked to share a few thoughts that may help clarify the amendment. With respect to disasters, SJR 6 contains an exception for disasters, so disaster spending would be outside of the cap. The legislature would not be restricted to fund those projects. She concurs with the testimony by Ms. Mills and Mr. King in terms of borrowing from the CBR and whether there is any "wiggle room." She concurs that SJR 6, as drafted, would limit borrowing to fulfill the deficit up to the appropriation limit. The only exception or only potential "work around" she can envision is to borrow from the CBR [constitutional budget reserve] and use the ten percent additional funding for capital improvements by using a revision in proposed Section 3 [of SJR 6]. She said that money "in the general fund" and the earnings reserve account, which is available for appropriation but is not in the general fund, might be available to the legislature to make capital improvement appropriations up to the ten percent cap.

8:01:57 PM

MS. MILLS concurred with Ms. Wallace that SJR 6 contains an exception for disaster funding. She also agreed that the earnings reserve account would be the only other source to go to for spending. She reiterated the funding sources are the earnings reserve account (ERA) the general fund (GF) and the constitutional budget reserve (CBR).

SENATOR SHOWER said that if the legislature were to take an unstructured draw from the earnings reserve account, it would mean the legislature was not following statutes and is breaking the law. He said Section 3 is clear that the CBR can only be

used to fund up to the appropriation limit. He related his understanding that anything beyond that would be an unstructured draw.

MS. MILLS answered that he is correct. However, if a different amount of revenue was flowing in, it could change the picture. The legislature could still take a structured draw, but the draw could bring the entire amount that is available to above what is needed to just do the cap. She asked whether that makes sense.

SENATOR SHOWER said that it does.

8:03:34 PM

MR. KING asked to play the devil's advocate. He offered his belief that there might be something he might wish to look more closely at before he responds.

CHAIR HUGHES acknowledged that this is not the final committee of referral so additional opportunities exist.

8:04:02 PM

SENATOR MICCICHE said it does not seem that the ERA becomes the general fund (GF) until the POMV [percent of market value] draw occurs and is moved into the general fund. "The earnings reserve account is not the general fund, is that correct?"

MS. MILLS answered that is correct.

SENATOR MICCICHE related a scenario in which the budget is \$4.6 billion, and the combined revenue and POMV was \$4 billion. If the legislature needed to do a CBR draw of \$600 million to reach the \$4.6 billion, the legislature could not go above the cap for any capital. He asked whether that is correct.

MS. MILLS answered that is correct.

MR. KING said if he was referring to a draw from the CBR that is correct. However, he pointed out that there is not any limitation in the Constitution [of the State of Alaska] that prevents an additional draw from the earnings reserve account (ERA).

SENATOR MICCICHE said that it would not be from the general fund. The POMV is deposited to the general fund. However, funds from the earnings reserve fund do not become general fund monies, unless the legislature decided to disregard all laws.

MS. MILLS answered that is correct. It would just be considered part of what is counted towards appropriations since it will go into the general fund, and then have to leave, at which point it would be considered under the appropriation limit.

SENATOR MICCICHE said that without a CBR draw, the revenue plus POMV, which he would simply refer to as "general fund revenue" was \$4.61 billion, suddenly a little money could be spent on excess capital, but to reach the ten percent would require \$5.06 billion of "natural revenue" plus POMV, before the legislature could use the ten percent. He offered his belief that this could only be used in high revenue years without a CBR draw.

MS. MILLS answered yes, that is how the department would interpret all of these provisions working together.

8:07:05 PM

SENATOR MICCICHE asked whether there is currently any limit on capital [improvements] with the existing appropriation limit. He further asked whether [Amendment 5] is the first limit on capital [improvements], which is much stricter since it does not allow the legislature to go above the cap unless there is no CBR draw. This provision would only apply to a high-revenue year.

MS. MILLS answered yes, for the most part. She agreed that [Amendment 5] would be the first real cap on capital improvements. Under the current appropriation limit, several areas relate to capital improvements, she said. First, it states that as the legislature approaches the limit, it is necessary to spend up to one-third of the limit on capital projects. Therefore, it currently forces a certain amount of capital spend if "you get up there to the limit." The other thing it does is to allow the legislature to go to the voters to spend more on capital projects, without any specific cap on that amount.

8:08:21 PM

SENATOR REINBOLD indicated her question was not answered. She asked whether the legislature has an opportunity to spend more money on the operating budget and use ten percent to fund capital improvements.

MS. MILLS answered yes, if the legislature had sufficient revenues. She said that the legislature could fill the cap with the operating budget [appropriation] and then use the ten percent for capital improvements.

SENATOR REINBOLD offered her belief that nothing prohibits the legislature from having a federal pass through directly to municipalities. She said she believes in local control. She said capital projects do not have to go through the state. She asked whether anything prohibits the municipalities from obtaining funding for capital improvements.

MS. MILLS answered there is not.

8:09:58 PM

SENATOR KIEHL asked whether the money in the statutory budget reserve account is considered as general fund, in terms of the CBR draw under subsection (b) of Amendment 5.

MS. MILLS answered yes, that would be considered in the general fund. She said that basically, her view is that the state has the general fund and the constitutional funds, including the constitutional budget reserve (CBR), and the permanent fund.

MR. KING explained that another provision within the resolution would prevent this money from being held in the statutory budget reserve. It indicates that for excess funds not appropriated at year end, the funds will be transferred to the principal account of the permanent fund or to the constitutional budget reserve (CBR). If [SJR 6] were to take effect, this would be a moot point because there would be no [savings reserve fund].

SENATOR KIEHL asked for the reference in SJR 6.

MS. MILLS referred to language on page 2, lines 15-24], Section 16 (b), which would become subsection (c) if Amendment 5 is adopted

8:11:52 PM

SENATOR KIEHL asked when the state sells general obligation (GO) bonds, if project managers can be funded from the receipts from the bond sales.

MS. MILLS said she was not familiar with how this works. She offered to research it and report back to the committee.

8:12:37 PM

CHAIR HUGHES offered her support for Amendment 5. She said as Senator Micciche indicated, there has not been a cap. She said she thinks a cap is good, especially since Alaska is still a young state that lacks infrastructure. The last major highway project was the Parks Highway in the 1970s, which is nearly 50

years ago. If the legislature wanted to fund \$300 million in capital improvement projects, it could add \$300 million to the operating budget under the cap. She suggested the Senate Finance [Standing Committee] might wish to consider a percentage limit within the cap for the operating budget to avoid the legislature using the ten percent provision to grow the operating budget. However, she supports SJR 6 because Alaska still has a lot of roads to build over time. However, she would prefer to have some type of limit.

8:14:48 PM

SENATOR REINBOLD remarked it was obvious that roads to resources need to be built. However, she favors local government control since the state has repeatedly overspent. She said she does not support Amendment 5 because she envisions the legislature would use it to "bloat" the operating budget and use the cap to fund capital improvement projects. She said that she thinks the intention is good. However, she sees the potential for abuse.

8:16:01 PM

SENATOR KIEHL referred to the language on page 1, line 7 of Amendment 5, which read "an additional amount in excess of the appropriation limit ..." He asked whether this language includes all fund sources or if the amount is limited to "effectively" general fund amounts as calculated in excess of the cap. He further asked if the legislature could bring in another "8-1 ratio" federal project for \$300 million no matter what the fund source.

MS. MILLS said that she thinks it might be helpful to think about the other exceptions that exist. Federal monies are already outside the cap. If the project has a state match, the state matching funds would fall under the cap or would need to be in the ten percent of the total appropriation limit.

SENATOR KIEHL agreed that was precisely the question. He referred to subsection (a), which read, "Appropriations made for a fiscal year shall not exceed ..." It goes on to list exceptions, but the language in [Amendment 5 on lines 7, (b)] reads, "the legislature may appropriate an additional amount in excess of the appropriation limit under (a)..." It does not indicate an additional amount in excess of the appropriation limit "as calculated under subsection (a)." He asked how the language in Amendment 5 pertains to the scenario of "\$300 million cap, don't care what the fund source is, that's what you got."

8:18:06 PM



MS. MILLS responded that federal receipts already fall outside the limit. She said she did not think this would affect the amount of federal funds and that just because it is a capital improvement project, that this would create another cap. Rather, this would really restrict the state funds because there is no other exception for that sort of spending.

SENATOR KIEHL said that is precisely what he is driving at, but that is not what the words in Amendment 5 read.

MS. MILLS interjected that it is necessary to read the existing exceptions list along with Amendment 5. She said that the existing exceptions allow federal funds for a specific purpose. She interpreted this to mean that federal funds are allowed, but Amendment 5 relates to [appropriations for] capital improvements. She acknowledged that it would be possible to specify "money from the general fund" as a way to clarify the language.

[8:19:28 PM](#)

CHAIR HUGHES offered her belief that the totality is important.

SENATOR KIEHL explained that he was unsure of that language. He said he appreciated the desire to read "amount" as specific, but it is not. He said he was unsure at this point of what to do.

[8:20:14 PM](#)

SENATOR SHOWER said that he understood what Senator Kiehl was saying, but he believes the language in Amendment 5 "gives us what we need." He explained that part of his goal with Amendment 5 is to allow the legislature to exceed the cap in "good years" to access federal funding. He echoed the same concerns as Senators Reinbold and Hughes because he wants to reduce state government. He agreed that if a loophole exists, someone will find a way to spend more money than the state can afford, which is partly why the state is at this juncture. He stated his intent is to allow the safety valve on "good years" for infrastructure, since infrastructure is important. He said he would not support this if he thought it would be used to increase the operating budget and thereby the size of government each year. However, he said he thinks Amendment 5 is fine because it is limited to capital improvements and only for one year. In addition, it includes a revised [appropriation] limit, which remains low and does not increase. He said he believes this works and meets the governor's intent in [SJR 6]. This would eliminate extra ways to spend money and increase the size

of government. He offered his belief that the questions have been answered.

8:22:05 PM

CHAIR HUGHES removed her objection.

8:22:13 PM

SENATOR REINBOLD objected. She said that she has repeatedly observed supplemental budgets added to the capital budget and not enough parameters are in place to prevent it. She appreciated the sponsor's intention, but every single word in a constitutional amendment matters. She said that she would err on the side of caution since she does not trust legislators to follow it. She said, "With that, I'm going to be a no vote on this."

8:23:08 PM

A roll call vote was taken. Senators Micciche, Kiehl, Shower, and Hughes voted in favor of Amendment 5 and Senator Reinbold voted against it. Therefore, Amendment 5 was adopted by a 4:1 vote.

8:23:39 PM

SENATOR MICCICHE offered his belief that the state needs a dramatically revised appropriation limit. He appreciated what the governor brought forward. He thinks the first interest rate was unrealistic, but he can support this wholeheartedly, and it would have avoided tens of billions of dollars had this been in place 25 years ago. He appreciated the committee's hard work on the amendments that he views as improvements to SJR 6.

8:25:10 PM

SENATOR REINBOLD said she supports local control since not all funding must pass through the state for local projects. She said she is not confident with the effects of the amendments the committee adopted, but she supports the concept of an appropriation limit and the original version of SJR 6. However, she did not wish to hold up moving SJR 6.

SENATOR KIEHL said that he appreciated the committee's work because it made a very bad constitutional amendment marginally better. Ultimately, he does not believe that the state needs a revised constitutional spending limit because the voters are the "term limit" and the "spending limit." They send a very strong executive branch and 60 very different legislators to represent them.

He said it is up to the legislature to figure out the structure in the Constitution [of the State of Alaska]. Mr. King presented numerous charts with three extended periods of reduced state spending that demonstrates that the constitution works. He said voters select their legislators who collectively complete the work. However, to place a particular political philosophy in the state's constitution rather than looking to the voters to make necessary changes is not the best way to amend it. He offered his belief that leaving aside the arguments the committee made about whether SJR 6 is an amendment or a revision, this resolution has serious constitutional issues. He reiterated his belief that it is not good constitutional writing because it does not put "faith in Alaskans at the ballot box." He said he would not be supporting moving the bill.

8:27:15 PM

CHAIR HUGHES remarked that this committee has focused on the constitutionality of the resolution. She expressed concern about the cascade, the waterfall, and the amount in the constitutional budget reserve (CBR). Since the next committee referral is the Senate Finance Standing Committee, she hopes it will consider the appropriation amount to keep on hand during volatile revenue streams and if one year is sufficient. She also would like to be sure, in terms of the cascade or waterfall, that funds can be deposited into the CBR. If excess funds must first be deposited into the permanent fund, perhaps not enough funds would be available to deposit to the CBR.

She said that she opposes depositing any of the ten percent appropriation for capital improvements outside the cap into the operating budget and would like the finance committee to consider ways to prevent that from happening, including considering establishing percentages within the cap. She offered her belief that the intention of SJR 6 is not to increase the operating budget. She said that recent polling has shown a very strong majority, 62 percent, of Alaskans support a constitutional spending limit. In addition, more people within each political party support it than oppose it. In the past, polling indicated seven percent of Alaska unsure. In closing, she said that Alaskans are very interested in seeing this move forward.

8:30:06 PM

SENATOR REINBOLD moved to report SJR 6, work order 31-GS1068\A as amended, from committee with individual recommendations and attached fiscal note(s). There being no objection, the CSSJR

6 (JUD) was reported from the Senate Judiciary Standing Committee.

8:30:30 PM

CHAIR HUGHES stated that the committee authorizes Legal Services, the Division of Legal and Research Services, Legislative Affairs Agency to make technical and conforming changes to the amended resolution.

8:30:55 PM

There being no further business to come before the committee, Chair Hughes adjourned the Senate Judiciary Standing Committee meeting at 8:30 p.m.